

CALIFORNIA COASTAL COMMISSION

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

**W14c****ADDENDUM**

Date: February 4, 2011
TO: COMMISSIONERS AND INTERESTED PERSONS
FROM: SOUTH COAST DISTRICT STAFF
SUBJECT: Commission Hearing of February 9, 2011, **item 14c** of agenda, Coastal Development Permit 5-10-110 (T-Mobile West Corp.), Newport Beach, Orange County

Go to the beginning of the original staff report.

Revisions to Staff Report

Commission staff recommends the following clarifications to the staff report. Deletions are shown in **bold, strike-through**

1. Special Condition 6, Liability for Costs and Attorney Fees.

The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, ~~the interpretation and/or enforcement of permit conditions, or any other matter related to this permit~~. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

Public Comment Letters

6 letters of opposition to the proposed project were received at the South Coast District Office on February 3, 2011 from: Craig LaFrance, Connie Skibba, Matthew and Jaime Chilton, John Burton, Joan Lyon, and James Mosher.

February 2, 2011

Craig LaFrance
2209 Private Road
Newport Beach, CA 92831
Cell Phone: 949-322-7964

Coastal Commission Hearing Feb.9, 2011
Agenda Item No. W14c
Application No. 5-10-110 (T-Mobile West Corp.)
Craig LaFrance – Opposed to the Project

California Coastal Commission
South Coast District
P.O. Box 1450
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RECEIVED
South Coast Region
FEB - 3 2011

Attn: John Del Arroz, Coastal Program Analyst

CALIFORNIA
COASTAL COMMISSION

Subject: Coastal Commission Hearing February 9, 2011
Agenda Item No. W14b
Application No. 5-10-110

Gentlemen:

I urge the Coastal Commission to deny the subject application.

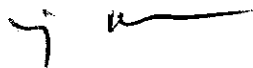
- The application does not offer objective evidence that full consideration was given to the needs of the community and the special character of the environs of the proposed installation.
- The residents of this Upper Newport Bay Community include members of: The Nature Conservancy; The Sierra Club; The Audubon Society; Friends of Harbors, Beaches and Parks; etc. that support, maintain and defend these park areas, as does the California Coastal Commission. The results of years/decades of work are now evident in the area, and proposed intrusions must be evaluated carefully.
- The application does not provide objective evidence that possible alternatives were broadly evaluated, with the involvement of others, and exhausted. It is not irrefutably proven that the installation must go into the proposed location.
- Much of the application documentation is anecdotal from the applicant. Applications reaching the Coastal Commission should already have addressed issues relevant to the Commission's charter and be supported with objective evidence. Inadequately prepared proposals waste the time and resources of all involved; the Community, the Coastal Commission and the Applicant,

as well as any involved Municipal Authorities. Objective evidence would include documents verifying authority to: sign contracts; issue building permits, etc. Affidavits from signatories attesting to their authority to issue the permits/documents/licenses would provide direct accountability for activities.

- As a provider of a desired/needed service to the public, the applicant should be supported with guidelines that will assist in locating installations acceptable to the various involved parties. It would be expected there is an industry/municipality guideline for locating installations in areas sensitive to appearance. If a guideline does not exist, development of one would seem to provide a tool for improving the application process, saving valuable resources of all agencies/parties involved. The Commission may find it appropriate to encourage the applicant to use such a guideline/checklist if one exists, or become involved with development of one if not in existence.
- The application should not be approved as a means of convenience to make this time-consuming exercise go away. Completion of the installation would detract from the appearance of the drive enjoyed by thousands of commuters (and cell phone users) daily as they drive by the park area. The city of Newport Beach and the applicant could have done a better job of this.

Thank you for your consideration of the above.

Respectfully submitted,



Craig P. LaFrance

Cell Phone: 949-322-7964

Agenda Item: W14c (Feb. 9, 2010)
Application Number: 5-10-110
My name: SKIBBA / SEAVIEW COMPANY
Position: OPPOSED

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

Attn: John Del Arroz (for distribution to the Commissioners)

Dear Commissioners,

My name is Connie Skibba. My husband and I are strongly opposed to this project for a cell site at the foot of the Private Road coastal bluff, as is every resident on Private Road.

For the past 12 years I have been President of the Seaview Company, which is the homeowner's association that owns and operates the private park in the center of our 17-home cul-de-sac.

My understanding is that T-Mobile has represented both to the City and to the Coastal Commission both that they have a coverage problem and that they have no alternative available to them other than adding antennas to this streetlight. I do not personally know about their need, but I do know they have made little or no effort to explore alternatives.

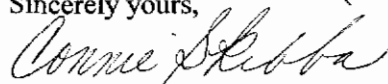
As an example, in April 2009, two Private Road residents met with T-Mobile's deployment consultant, Mr. Paul Gerst, at the Newport Beach City Hall and were told by him that the ideal "win-win" alternative would be to install an antenna/flag pole in the bluff top Private Road park: the antennas would be much higher in the air, they would be unobstructed by the bluff, and residents would receive revenue to compensate for their trouble. We discussed this possibility at our August homeowners' meeting. However, despite the immense enthusiasm Mr. Gerst is said to have expressed for this alternative when at City Hall, he never even bothered to contact me, and calls to him from residents were not returned.

Instead we have since learned that in May 2009 T-Mobile terminated the lease on the streetlight, apparently deciding they did not need a site here, only to be invited back by City Planner Janet Brown. We have had absolutely no contact from T-Mobile about the possibility of installing a flagpole in the park before or after they resumed the streetlight lease, at the City's invitation, in August 2009.

Their statement that they have diligently explored all alternatives to impacting a coastal view road is as false as I suspect many of their other statements to the Commission.

I urge you to reject this application.

Sincerely yours,



Connie Skibba
Seaview Company President
2218 Private Road
Newport Beach, CA. 92660

Agenda Item: W14c (Feb. 9, 2010)
Application Number: 5-10-110
My name: CHILTON
Position: OPPOSED

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

Attn: John Del Arroz (for distribution to the Commissioners)

Dear Commissioners,

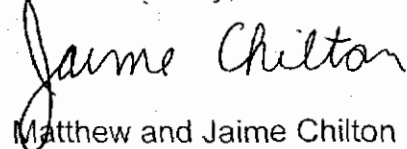
Thank you for notifying us of this hearing. We are opposed to this project as an unnecessary addition to a beautiful coastal road.

Our family relies completely on T-Mobile phones to communicate, and since moving to Private Road in September 2010 we have had no need for a land line. We are very happy with the T-Mobile service and have experienced no problems at all at home or on the road, including specifically along Irvine Avenue.

We see no need to add an ugly new transmitter facility at this location.

Please turn this project down.

Yours sincerely,

A handwritten signature in cursive script that reads "Jaime Chilton". The signature is written in dark ink and is positioned above the printed name and address.

Matthew and Jaime Chilton
2308 Private Road
Newport Beach, CA. 92660

Agenda Item: W14c (Feb. 9, 2010)
Application Number: 5-10-110
My name: JOHN BURTON
Position: AGAINST

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

Attn: John Del Arroz (for distribution to the Commissioners)

Dear Commissioners,

I strongly oppose the granting of the above-referenced Coastal Development Permit. I feel it is a totally unnecessary degradation of the coastal environment.

In the staff report T-Mobile's deployment consultant, Mr. Paul Gerst, acknowledges that as a result of existing transmitters T-Mobile's phones show good signal strength throughout the alleged problem area, but claims that even when showing "6 bars" they may not work. This does not accord with either common sense or with my experience.

On Monday, January 10, 2011, two days before the hearing I had hoped to attend in Long Beach, I accompanied my neighbor, Dr. James Mosher, in his car, along Irvine Avenue between 4:45 and 5:15 pm, at the peak of the evening commute. Using Dr. Mosher's T-Mobile phone (a photo of which is shown in your staff report) I maintained a conversation with T-Mobile's customer service number along the full length of the coastal zone portion of Irvine Avenue. Not only did the call never "drop," but I was unable to detect the slightest difference in call quality when parked next to T-Mobile's mega transmitter site at Harbor Christian Church compared to when parked at the point of lowest signal strength, which is barely a block to the south of that and at which the phone indicated 2-3 bars.

Following that test, we proceeded to an area outside the Coastal Zone, to the southeast of the proposed site, where the indicated signal strength fell to 1 and sometimes even 0 bars. Even there, the T-Mobile phone worked flawlessly. Again, we were unable to make the call "drop" and could detect no difference in call quality. Since the signal strength within the Coastal Zone is everywhere higher than this, it is extremely hard to imagine a serious problem could exist there.

T-Mobile's technology has clearly superseded any need for this project.

Furthermore, the proposed location is at the bottom of a low spot with a hill right behind it. One doesn't need to be an RF engineer to know that height and line of sight are important for this application. This is an absurd spot for a transmitter/receiver.

This is a project gone wrong from the start that T-Mobile themselves at one point canceled. Since then, it seems a process has been put in motion which T-Mobile and the City of Newport Beach feel must continue, bad idea or not, for reasons they will not discuss with residents.

I urge you to deny the application.

Yours sincerely,



John Burton
2317 Private Road
Newport Beach, CA. 92660

Agenda Item: W14c (Feb. 9, 2010)

Application Number: 5-10-110

My name: LYON

Position: OPPOSED

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

Attn: John Del Arroz (for distribution to the Commissioners)

Dear Commissioners,

My husband and I appreciate you notifying us about this hearing. I walk by the streetlight on Irvine Avenue every morning and have not seen it mentioned there.

I have been very concerned that the Commission is considering allowing T-Mobile to add another cell phone facility to this beautiful stretch of road overlooking the Back Bay, especially since they already have a very large one barely two blocks to the north. The Commission should be encouraging the City to underground utilities along Irvine Avenue to the north of that location -- where ugly poles run adjacent to the Nature Preserve -- rather than adding new blight to this portion, where everything except the streetlights has already been placed underground.

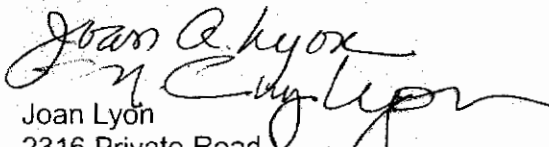
My understanding is that this is the only place in all of Newport Beach where the City is asking T-Mobile to install new antennas, even though T-Mobile undoubtedly has poorer coverage in many other areas. I believe the City is promoting this only because of the revenue it will generate, which they do not get at the other location -- and without regard to whether it is needed or in an appropriate location.

My neighbors who have T-Mobile phones say they have no problem with coverage. In the absence of a problem, I can see no reason to spoil the coastal environment for the sake of City revenue.

Many of us also have very understandable concerns about possible health hazards to children and wildlife, and about encouraging cell phone use on a road that, although beautiful, is also already dangerous because of high speeds, blind corners and curves.

It seems outrageous to me that the City has been able to push this project as far as they have without any prior public notice. I thank the Coastal Commission for looking into this matter and I urge you to reject this application.

Sincerely yours,


Joan Lyon
2316 Private Road
Newport Beach, CA. 92660

Agenda Item: W14c (Feb. 9, 2010)

Application Number: 5-10-110

My name: MOSHER

Position: OPPOSED

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

Attn: John Del Arroz (for distribution to the Commissioners)

Dear Commissioners,

I wish to thank you for scheduling this matter for a hearing based on the coastal concerns raised by the public in the letters now before you as Exhibits 8-10 in the staff report. I gather that your staff considers this a small matter of little concern to the Commission, but I don't think staff has adequately understood or addressed most of the public's concerns, and indeed, in the absence of a valid lease for use the property on which development is proposed, I doubt the matter should even be before you.

Absence of valid lease and current local permissions

Attachment 1: The first and show-stopping concern is that the applicant lacks the necessary property rights to build the proposed structure. It is true T-Mobile has a "License Agreement" for use of the City-owned streetlight, dated October 27, 2008 and signed by a former Newport Beach City Manager, however under the City Charter, a contract for something other than the purchase of budget items is binding only if it has been approved by the City Council. The present contract is not for purchase of anything, but rather for generation of revenue by leasing public trust property, yet Council approval has never happened.

In an effort to justify the project, the Newport Beach City Attorney's Office has ungrammatically attempted to argue that the Charter only requires approval "by the City Council ... or by such ... officer ... as shall be designated by the City Council" – in this case the City Manager – however the Charter does not support such a reading (the delegation provision applies only to signing, not to approval). Alternatively, the City Attorney argues that if Council approval *is* required, the Council is empowered to create policies under which it can take action without a vote at a noticed public meeting – something that seems contrary to the Brown Act, and certainly not something the Coastal Commission would be allowed to do.

Attachment 2: The public is likewise concerned that the Approval in Concept submitted to the Commission is invalid, since it is predicated on Newport Beach Associate Planner Janet Brown's belief that the Telecom Permit she issued to T-Mobile on March 30, 2007 remains valid. As articulated in our previous letters, our concern is that under both the administrative sections of Municipal Code Title 15 (under which the permit was issued), and under the Uniform Building Code (which is cited both in the telecom code and explicitly on the permit, and also by T-Mobile on its plans) that permission became null and void if construction did not commence within 180 days of the date of issuance of the permit. That deadline passed long before T-Mobile saw fit to notify residents it was ready to start construction (notice being first received on January 22, 2009), and years before the matter was brought to the attention of the Coastal Commission (Approval in Concept 2010008 being issued on February 12, 2010). Hence the "final approval" is null and void.

The staff report before you contains (as Exhibit 6) a glib assurance from Ms. Brown that the 2007 permit remains valid because no expiration date is printed on it. However this statement is in response to the following cryptic question from Commission Staff (in an e-mail sent to Ms. Brown on August 12, 2010 at 1:55 PM), which you have not been shown:

"[Mr. James Mosher] 's raised issues regarding the validity of NextG's [sic] local approval – including the expiration of a telecom permit, and other associated requirements. Can I get confirmation from you that the telecom permits and other required local approvals for this project are valid?"

Commission staff did not explain to Ms. Brown the nature of the public's concern with the permits, so her response can hardly be regarded as a refutation. Moreover, Commission staff does not appear to have ever asked the City Clerk for evidence of City Council approval of T-Mobile's License Agreement.

Pre-approving an application for which proper local approvals are not yet in place seems a bad idea, but at a minimum I should think Coastal Commission approval should be conditioned on T-Mobile providing proof of a City Council-approved contract to use and alter public property (addressing the Charter issue), and of currently valid local permits (addressing the 180 day expiration issue).

Even if those documents could be produced, I do not see how T-Mobile could agree to **Standard Condition 5** in the proposal before you, since T-Mobile is not a property owner and has no power "to bind all future owners" to the conditions of the Coastal Development Permit. Only the City of Newport Beach could do that, and T-Mobile has no power to speak for us.

Absence of need for project

Attachment 3: The voluntary termination of the lease by T-Mobile in May 2009, and its reinstatement at the request of the City (Attachment 3b) makes it appear to the public that the primary motivation behind this project is the City's desire to generate revenue and T-Mobile's wish to capitalize on that opportunity to increase network capacity, independent of any current problem or need.

On page 9 of Exhibit 10 in the staff report, the public has presented evidence that T-Mobile already has perfectly adequate coverage at the subject site, as demonstrated by the "6 bars" signal strength indicated by T-Mobile's handset, presumably as a result of the major existing facility, never approved by the Coastal Commission, at Harbor Christian Church (**Attachment 4**). Your staff has rejected this evidence on the basis of an argument advanced by T-Mobile's deployment consultant (staff report Exhibit 7, pp. 1-2), claiming the public is neglecting "the other half of the equation" whereby cell phones may not have sufficient connectivity to work even when they show 6 bars. That argument is nonsense.

Moreover, the actual dropped call data the public has seen indicates nothing more than that T-Mobile has dropped calls in all its antennas, and it is presented in the form of raw call numbers that greatly exaggerate the severity of the problem, which most likely affects only a very small percentage of calls, and at similar levels throughout their network.

I have had the T-Mobile phone pictured in the staff report since June 2010. Notwithstanding Mr. Gerst's two-part equation theory, the only places I have known it not to work are where it shows "0 bars/ Emergency calls only", usually deep inside buildings. Aside from that, dropping of calls, once connected, is very rare.

As a PhD physicist, the only circumstances in which I can imagine a cell phone *not* working when it shows 6 bars signal strength is if the base station to which it is connected is so swamped with simultaneous calls that it is unable to open an additional channel. But that would be a problem of *call capacity*, not *signal strength*. T-Mobile may indeed wish to increase the future call capacity of its network by adding new antennas at any new locations made available to it, but there is no reason a new site for this area would need to be in the coastal zone, and certainly no reason it would need to be on a scenic coastal view road. There are alternative locations outside the coastal zone that would be just as effective for increasing call capacity and more effective for increasing signal strength in areas where it is weaker than it is here.

Inadequate evaluation of alternatives

Staff's argument that T-Mobile has no obligation to explore alternative solutions, including the no new facility option, is a bit hard to follow, but seems predicated on the planner's view that the impact of a single new telecom facility is not "significant" (although more than one might be). The public that will actually be using the area obviously does not share this view, particularly regarding the large above-ground utility boxes (**Attachment 5**) that will be added to a landscaped area in which all accessories (other than the streetlights) had previously been underground.

We have previously indicated alternatives outside the coastal zone (for example, page 10 of Exhibit 10 in the staff report, or sites south of that) which would both be more appropriate locations for an industrial looking installation and also be closer to the areas in which T-Mobile has lower signal strength.

Another alternative suggested by Mr. Gerst would be placement of a flagpole-type transmitter in the Private Road common area lot on the bluff top, out of sight of the Nature Reserve and coastal view road, but as indicated in the separate letter by homeowners' association President Connie Skibba, Mr. Gerst completely failed to investigate what he himself said would be a much better alternative.

Conflicting and unenforceable collocation and obsolescence requirements

Should you accept staff's recommendation please realize you are being asked to approve, as **Special Condition 1**, a collocation requirement which is inconsistent both with the staff report and the local approval. The report says (page 9):

"Of course, the visual impacts associated with a co-located facility compared with another location would also need to be analyzed to determine which option has the least impact."

But there is nothing about that in the proposed condition, which **requires** collocation, regardless of visual impact, unless it is **technically** unfeasible.

In either event, the proposed collocation requirement is diametrically opposed to that specified in the local building permit cited in the City's Approval in Concept. Although we feel it to be null and void, that permit **prohibits** any future collocation at this facility (see text in **Attachment 2a**).

Special Condition 2, about future redesign, *is* compatible with a similar condition in the now void local permit, but in neither case is a time frame set for when, or by whom, reviews will be made, who will decide when a redesign or abandonment is necessary, or how it will be enforced.

Again, I thank you for removing this application from the Consent Calendar, and I feel it should be rejected for the reasons previously stated.

Yours sincerely,



James M. Mosher, Ph.D. (Caltech, 1977)
2210 Private Road
Newport Beach, CA. 92660

for more information see: <http://newportcellsites.wikispaces.com>

ATTACHMENTS

- 1a – Excerpts from Newport Beach City Charter (1 p)
 - Contract signing requirements
 - City Clerk record retention requirements
- 1b – Request for contract approval documents from City Clerk (3 pp)
- 1c – City Attorney's theory of contract approval requirements (2 pp)
 - Inconsistent with Charter and Brown Act
- 2a – Excerpts from March 30, 2007 local permit approval by Janet Brown (2 pp)
 - Permit subject to Municipal Code and Uniform Building Code
 - Collocation requirement inconsistent with Commission staff recommendation
- 2b – Excerpts from Newport Beach Municipal Code (1 p)
 - Permits issued under Title 15 expire if not acted upon in 180 days
 - Telecom permit additionally subject to Uniform Building Code
- 2c – Excerpts from Uniform Building Code (1 p)
 - All permits issued under code null and void after 180 days
- 3a – Voluntary termination of lease by T-Mobile – May 8, 2009 (1 p)
- 3b – City planner's letter – August 26, 2009 (2 pp)
 - Invitation to rescind termination despite lack of performance
- 3c – Un-termination of lease by T-Mobile – August 27, 2009 (1 p)
- 4 – Photos of Harbor Christian Church wireless facility (1 p)
 - Provides service to the coastal view segment of Irvine Avenue
- 5 – Photo of utility box at wireless facility similar to the proposed one (1 p)

CHARTER OF THE CITY OF NEWPORT BEACH

Section 421. Contracts. Execution.

11 The City shall not be bound by any contract, except as hereinafter provided, **unless the same shall be made in writing, approved by the City Council** and signed on behalf of the City by the Mayor and City Clerk or by such other officer or officers as shall be designated by the City Council. Any of said officers shall sign a contract on behalf of the City when directed to do so by the City Council. 114

By ordinance or resolution the City Council may authorize the City Manager to bind the City, with or without a written contract, for the acquisition of equipment, materials, supplies, labor, services or other items included within the budget approved by the City Council, and may impose a monetary limit upon such authority.

The City Council may by ordinance or resolution provide a method for the sale or exchange of personal property not needed in the City Service or not fit for the purpose for which intended, and for the conveyance of title thereto.

Contracts for the sale of the products, commodities or services of any public utility owned, controlled or operated by the City may be made by the manager of such utility or by the head of the department or City Manager upon forms approved by the City Manager and at rates fixed by the City Council.

The provisions of this Section shall not apply to the services rendered by any person in the employ of the City at a regular salary.

Section 603 City Clerk. Powers and Duties.

The **City Clerk shall** have power and be required to:

11 (a) Attend all meetings of the City Council unless excused and **be responsible for the recording and maintaining of a full and true record of all of the proceedings of the City Council** in books that shall bear appropriate titles and be devoted to such purpose. 114

(b) Maintain separate books, in which shall be recorded respectively all ordinances and resolutions, with the certificate of the Clerk annexed to each thereof stating the same to be the original or a correct copy, and as to an ordinance requiring publication, stating that the same has been published or posted in accordance with this Charter; keep all books properly indexed and open to public inspection when not in actual use.

11 (c) **Maintain separate books, in which a record shall be made of all written contracts and official bonds.** 114

MOSHER - W14C (Feb. 9, 2011) [Request for approval documents] - awaiting response Attach ment 1b - 1 of 3

RECEIVED

January 31, 2011

2011 JAN 31 AM 10:02

Leilani I. Brown, City Clerk
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA. 92663

OFFICE OF
THE CITY CLERK
CITY OF NEWPORT BEACH

Dear Ms. Brown,

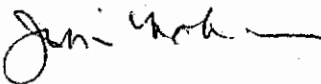
With regard to the License Agreement which the City of Newport Beach entered into with Omnipoint Communications, Inc. (a subsidiary of T-Mobile USA, Inc.) for private commercial use of a publicly-owned streetlight on October 27, 2008, I am requesting to inspect:

- (1) Any record of this contract that exists in the books of contracts and bonds that you maintain pursuant to Newport Beach City Charter Section 603(c) and of the date that record was entered.
- (2) Any record of the approval of this contract by the City Council that exists in the books of proceedings you maintain pursuant to Charter Section 603(a).

For your convenience in identifying the records requested I am attaching copies of the cover and signature pages from the 29-page Agreement.

Please note that I am not asking for a legal opinion as to whether this contract is binding or not. I am simply asking if such records exist in the books maintained by your office. In the last year I have been repeatedly told you have no such records. I am now requesting a prompt written determination to that effect as required under California Government Code 6255(b). An advance copy of your response by e-mail would also be appreciated.

Yours sincerely,



James M. Mosher, Ph.D.
2210 Private Road
Newport Beach, CA. 92660

jimmosher@yahoo.com
(949) 548-6229

TELECOMMUNICATIONS LICENSE AGREEMENT
(Streetlight)

This LICENSE AGREEMENT ("Agreement") is entered into between Omnipoint Communications, Inc., a subsidiary of T-Mobile USA, Inc., a Delaware corporation ("Company"), at 3 Imperial Promenade, Suite 1100, Santa Ana, CA 92707, and the City of Newport Beach, a municipal corporation and charter city ("City") this 27th day of October, 2008. Company and City are each a "Party" and together the "Parties" to this Agreement.

RECITALS

- A. City is the fee title owner of that certain real property known as Irvine Avenue (northeast of Santiago Drive) in the City of Newport Beach, California, such property depicted more particularly in Exhibit "A" ("Real Property");
- B. Company desires to license from City, on a non-exclusive basis, the right to use that certain portion of the Real Property, and those certain related easements through the Real Property for physical access and utilities, as depicted in Sheet E-1 of the Encroachment Permit attached hereto as Exhibit "B" (the "License Area");
- C. City is the fee title owner of a streetlight located on Irvine Avenue (northeast of Santiago Drive), City of Newport Beach, California, such property depicted in Sheet LS2 of Exhibit "B" ("Streetlight");
- D. Company desires to license from City, on a non-exclusive basis, the right to replace the Streetlight with a new streetlight ("Replacement Streetlight") to accommodate both the City's standard streetlight fixture and the operation of Company's wireless telecommunications antenna and related facilities, described more particularly in Sheet A-4 of Exhibit "B", and which may require encroachment upon and occupation on a portion of the public-right-of-way; and
- E. City is willing to make the Replacement Streetlight and License Area available to Company, subject to the covenants and conditions set forth in this Agreement on a non-exclusive basis, in order to facilitate the efficient and orderly deployment of communications facilities in the City of Newport Beach.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

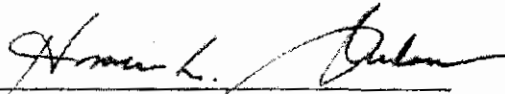
1. License:

City grants a non-exclusive license ("License") to Company for the term of this Agreement, to replace the Streetlight with the Replacement Streetlight for the uses specified in this Agreement. City further grants to Company a non-exclusive license to access the Replacement Streetlight, subject to the conditions of the Encroachment Permit issued by the Public Works Department, attached hereto

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate on the date and year first written herein.

City of Newport Beach
A Municipal Corporation

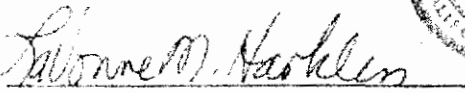
OMNIPOINT COMMUNICATIONS, INC.,
a subsidiary of T-Mobile USA, Inc.,
a Delaware corporation


Homer Bludau, City Manager

By:


Danny Bazerman
Director of Engineering & Operations

ATTEST:



Lorraine M. Karklen
City Clerk




Date:

11/6/08

APPROVED AS TO FORM:


Aaron C. Harp,
Assistant City Attorney
For the City of Newport Beach

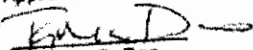
By:


Christopher Eldridge
Area Director of Regional Development

Date:

11/6/08

Approved as to form


Tania B. Dao
Corporate Counsel



CITY OF NEWPORT BEACH

OFFICE OF THE CITY ATTORNEY

David R. Hunt, City Attorney

March 18, 2010

Via Email jimmosher@yahoo.com

Mr. Jim Mosher
2210 Private Road
Newport Beach, California 92660

Re: T-Mobile Telecommunication Facility at 2101 Irvine Avenue (PA2007-002)
City Attorney File No. A09-00624

Dear Mr. Mosher:

Councilmember Nancy Gardner referred your inquiry regarding the above referenced telecommunication facility to our office for a response. As we have conveyed to you on multiple occasions in the past, both verbally and in writing, the City of Newport Beach ("City") disagrees with the allegations contained in your correspondence.

On September 21, 2009, in response to your Public Records Act request we gave you all documents associated with the license agreement between the City and T-Mobile for the above referenced telecommunication facility. On October 2, 2009, we sent you a letter responding to your prior allegations and stating the City complied with all applicable laws and regulations when it granted T-Mobile's application to install a telecommunications facility. On October 22, 2010, we met with you and re-stated the City's position that all rules and regulations were complied with. On December 11, 2010, we met with you again with T-Mobile's representatives, the City Manager and members of the City Council. The City Manager explained that while the City does not have a copy of the written notice that was submitted to the City Council in 2007 pursuant to City Council Policy L-23(E), the City Manager was confident that notice had been provided to the City Council. This is different than your depiction of the City Manager's or City Attorney's comments where you suggest notice was never given to the City Council.

Additionally, the "certain enumerated exceptions" that you omitted from your reading of City Charter Section 421 are important and their absence negates the City Council's authority to delegate responsibility to the City Manager. Specifically, City Charter Section 421 provides, in part, "[t]he City shall not be bound by any contract...unless the same shall be made in writing, approved by the City Council and signed on behalf of the

Mr. Jim Mosher

March 18, 2010

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City...by such...officer...as shall be designated by the City Council." The City Council granted the City Manager the authority to draft and sign telecommunication license agreements via City Council Policy L-23. Policy L-23(E) provides for the City Council's approval of a telecommunication license agreement through consent (i.e., if the City Council does not object to a telecommunication facility agreement within 30 days it is deemed approved on the 45th day).

The T-Mobile telecommunication facility agreement satisfies City Charter Section 421: (1) the agreement is in writing; (2) the agreement was approved by the City Council (i.e., no objections were lodged by the City Council within the 30-day period); and (3) the agreement was signed by the City Manager under the authority granted to him by the City Council in Policy L-23.

Thus, while we are sympathetic to your position regarding the T-Mobile telecommunication facility, we disagree with your allegations that the City did not follow the applicable rules and regulations when it approved the telecommunication facility's permits and license agreement. We have conveyed this position to you on numerous occasions, as evidenced by the partial listing of dates provided above, and we do not have any new information to add to the record at this time.

It is apparent from our multiple meetings with you and your correspondence that nothing short of a revocation of the telecommunication facility's license agreement and permits will satisfy you. But as we have told you, the City has no intention of revoking the license agreement or permits at this time. Therefore, we consider this to be our final communication to you regarding the T-Mobile telecommunication facility located at 2101 Irvine Avenue, Newport Beach, California (PA2007-002).

Sincerely,

OFFICE OF THE CITY ATTORNEY



Leonie Mulvihill,
Assistant City Attorney

March 30, 2007
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**FINDINGS AND
CONDITIONS OF APPROVAL**
Telecommunication Permit No. 2007-001
(PA2007-002)

Findings:

1. The telecommunications facility as proposed meets the intent of Chapter 15.70 of the Newport Beach Municipal Code, while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic ocean and coastal views, and otherwise mitigating the impacts of such facilities for the following reasons:
 - The proposed telecom facility will not be detrimental to public health or safety because it is required to comply with the applicable rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
 - The telecom facility will be located in the public right-of-way on a City-owned streetlight pole. Any future facility proposed to be located in the vicinity shall be a minimum of 1,000 feet from the facility approved by this permit so as to limit the adverse visual effects of proliferation of facilities in the City.
 - Due to the design and location of the antennas and amplifiers on the new streetlight pole, impact to public views is minimized.
2. The telecommunications facility as proposed conforms to the technology, height, location and design standards for the following reasons:
 - The telecom facility approved under this permit utilizes the most efficient and diminutive available technology in order to minimize the number of facilities and reduce the visual impact.
 - The antennas and amplifiers for the telecom facility approved by this permit will be closely mounted to the streetlight pole and will be painted to match the color and texture of the streetlight pole on which they are mounted.
 - The support equipment cabinet for the telecom facility will be placed in a new below-grade vault located in a City parkway in the public right-of-way.
 - The below-grade support equipment and above-grade electrical meter pedestals located in the public right-of-way will comply with the provisions of Title 13 of the NBMC and with all requirements of the American's with Disabilities Act (ADA).
3. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 3 (New Construction or Conversion of Small Structures) because the

Collocation
requirements

March 30, 2007
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existing streetlight pole is being reconstructed and slightly modified to accommodate the attachment of the antennas and amplifiers.

Conditions:

1. The development shall be in substantial conformance with the approved plot plan, antenna and equipment plans, and elevations, except as noted in the following conditions.
2. Anything not specifically approved by this Telecom Permit is not permitted and must be addressed in a separate and subsequent Telecom Permit review.
3. The telecom facility approved by this permit shall comply with all applicable rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
4. The applicant shall enter into a Telecommunications License Agreement with the City of Newport Beach prior to commencement of construction of the telecom facility.
5. Prior to commencement of construction of the telecom facility, the applicant shall obtain approval of an encroachment permit issued by the Public Works Department. Drawings and structural design plans shall be submitted to the City of Newport Beach for review and approval by the Public Works, Utilities and General Services Departments. A copy of this approval letter shall be incorporated into the drawings approved for the issuance of the encroachment permit.
6. The telecom facility shall comply with all regulations and requirements of Chapter 13 of the Newport Beach Municipal Code, the Americans with Disabilities Act (ADA), as well as the Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code and National Electrical Code.
7. Traffic control plans shall be prepared for the removal of the existing streetlight pole and installation of the new streetlight pole and appurtenant components of the telecom facility and submitted as part of the encroachment permit application.
8. All private and City-owned landscaping and irrigation damaged or disturbed during the course of construction shall be restored to the satisfaction of the General Services Department and guaranteed for one (1) year unless otherwise noted by the City. Contact the General Services Parks Supervisor to schedule a job walk prior to commencement of construction.

Newport Beach Municipal Code Title 15: BUILDINGS AND CONSTRUCTION**Chapter 15.02 : ADMINISTRATIVE CODE****15.02.030 Amendment to Section 101.2.**

SECTION 101.2 **Scope.** The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

15.02.090 Amendment to Section 105.5.

SECTION 105.5 **Expiration.** *Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance*, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one extension of time, for a period not more than 180 days. The extension shall be requested in writing and justifiable cause demonstrated.

Chapter 15.70 : WIRELESS TELECOMMUNICATION FACILITIES**15.70.020 General Provisions.**

A. **Applicability.** These regulations are applicable to telecom facilities providing voice and/or data transmission such as, but not limited to, cell phone and radio relay stations.

B. **Exempt Facilities.** Amateur radio and receiving satellite dish antennas regulated by Chapter 20.6l are exempt from the provisions of this chapter.

C. **Permit Required.** A permit shall be required for all telecom facilities regulated by this chapter in accordance with Section 15.70.070.

D. **Other Regulations.** *All telecom facilities within the City shall comply with the provisions of this chapter and the following requirements:*

1. Conditions in any permit or license issued by a local, state or federal agency which has jurisdiction over the telecom facility.

2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

3. Easements, covenants, conditions or restrictions on the underlying real property.

4. **The Uniform Building Code**, Uniform Fire Code, Uniform Mechanical Code and National Electrical Code, as amended by state or local law or regulation.

5. The provisions of Title 13 to the extent the telecom facilities are proposed to be located on or within the public right of way.

E. **Regulations not in Conflict or Preempted.** All telecom facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this chapter:

1. Design guidelines or standards in any applicable specific plan within the Newport Beach Zoning Code (Title 20).

2. Requirements established by any other provision of the Municipal Code or by any other ordinance or regulation of the City, other than those listed in paragraph D of this section.

and that the fees specified in Section 107 have been paid, the building official shall issue a permit therefor to the applicant.

When the building official issues the permit where plans are required, the building official shall endorse in writing or stamp the plans and specifications APPROVED. Such approved plans and specifications shall not be changed, modified or altered without authorizations from the building official, and all work regulated by this code shall be done in accordance with the approved plans.

The building official may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holder of a partial permit shall proceed without assurance that the permit for the entire building or structure will be granted.

106.4.2 Retention of plans. One set of approved plans, specifications and computations shall be retained by the building official for a period of not less than 90 days from date of completion of the work covered therein; and one set of approved plans and specifications shall be returned to the applicant, and said set shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.

106.4.3 Validity of permit. The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

The issuance of a permit based on plans, specifications and other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this code or of any other ordinances of this jurisdiction.

106.4.4 Expiration. Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work, and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

106.4.5 Suspension or revocation. The building official may, in writing, suspend or revoke a permit issued under the provisions of this code whenever the permit is issued in error or on the basis of

incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this code.

SECTION 107 — FEES

107.1 General. Fees shall be assessed in accordance with the provisions of this section or shall be as set forth in the fee schedule adopted by the jurisdiction.

107.2 Permit Fees. The fee for each permit shall be as set forth in Table 1-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment.

107.3 Plan Review Fees. When submittal documents are required by Section 106.3.2, a plan review fee shall be paid at the time of submitting the submittal documents for plan review. Said plan review fee shall be 65 percent of the building permit fee as shown in Table 1-A.

The plan review fees specified in this section are separate fees from the permit fees specified in Section 107.2 and are in addition to the permit fees.

When submittal documents are incomplete or changed so as to require additional plan review or when the project involves deferred submittal items as defined in Section 106.3.4.2, an additional plan review fee shall be charged at the rate shown in Table 1-A.

107.4 Expiration of Plan Review. Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding 180 days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

107.5 Investigation Fees: Work without a Permit.

107.5.1 Investigation. Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.

107.5.2 Fee. An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in Table 1-A. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

107.6 Fee Refunds. The building official may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a

T-Mobile

Omnipoint Communications, Inc.
a subsidiary of T-Mobile USA Inc.
2008 McGaw Ave.
Irvine, CA 92612

May 8, 2009

OVERNIGHT

City of Newport Beach
Attn: City Manager
3300 Newport Blvd.
Newport Beach, CA 92658

RE: Lease on property located at 2101 ½ Irvine Ave, Newport Beach, CA 92660
T-Mobile Site Number: LA13163A - Light Standard 2008 ROW


To Whom It May Concern:

Thank you for your time and assistance in allowing TMO CA/NV, LLC to consider your property for the installation of our telecommunications equipment.

This letter serves as our one hundred eighty (180) day notice that TMO CA/NV is terminating the above-mentioned lease pursuant to Paragraph 22 of the Lease. Termination date effective as of November 8, 2009. //←

If you have any questions relating to this letter, please contact Tina Gomez at 949-567-6985.

Sincerely,


Danny Bazerman
Area Director



CITY OF NEWPORT BEACH
PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92658
(949) 644-3200; FAX (949) 644-3229

→ 1
August 26, 2009

Sequoia Development Services, Inc.
Attention: Paul Gerst
One Venture, Suite 200
Irvine, CA 92618

Dear Mr. Gerst:

Subject: Telecommunication Permit No. 2007-001 (PA2007-002)
2101 (CS) Irvine Avenue (Public Right-of-Way), Newport Beach

This letter is in response to our earlier telephone conversations we have had regarding the installation of a T-Mobile wireless telecommunications facility ("telecom facility") on a city-owned streetlight pole located in the public right-of-way on Irvine Avenue in the City of Newport Beach.

As you are aware, following approval of the telecom permit and license agreement, the City issued a stop-work order to temporarily halt construction of the facility in response to concerns raised by a resident in the vicinity of the project site. The purpose of the stop-work order was to allow time for the City and T-Mobile's representative to review the proposed project with the concerned resident and provide any additional information that may have been omitted from the administrative record.

On April 2, 2009, we met with two residents (Mr. Jim Mosher and Mr. John Burton) to discuss the project. At the conclusion of the meeting you agreed to provide some additional data regarding the frequency of dropped calls, and to explore some additional alternative locations. We determined it would be practical to retain the services of an independent technical advisor at T-Mobile's expense to review the administrative record and additional data provided to confirm or deny the validity of the data provided. In order to retain the technical advisor, the City requested that a \$1,000 deposit be submitted. A deposit was never submitted; however, and in May the City received a letter terminating the lease from T-Mobile.

|| Since receipt of the termination letter, we have discussed the project and I have indicated the City's interest in proceeding with the project. To ensure clarity, the City is not taking a position that the site is unavailable to T-Mobile. If T-Mobile is desirous of moving forward, please contact me at (949) 644-3236, or jbrown@newportbeachca.gov. However, if we do not hear from you by **September 11, 2009**, we will assume that T-Mobile for its own reasons still wishes to terminate the agreement. || ←

I look forward to hearing from you. Please do not hesitate to contact me if you have questions. Thank you.

Sincerely,



Janet Johnson Brown
Associate Planner

cc: A. Harp, Assistant City Attorney
D. Lepo, Planning Director

Omnipoint Communications, Inc. (a subsidiary of T-Mobile)
Danny Bazeman, Area Director
2009 McGaw Avenue
Irvine, CA 92612

T-Mobile

T-Mobile West Corporation
a subsidiary of T-Mobile USA Inc.
2008 McGaw Ave.
Irvine, CA 92612

→|| August 27, 2009

OVERNIGHT

City of Newport Beach
Attn: City Manager
3300 Newport Blvd.
Newport Beach, CA 92658

RE: Telecommunication License Agreement ("License") on property located at 2101 ½ Irvine Ave, Newport Beach, CA 92660
T-Mobile Site Number: LA13163A – Light Standard 2008 ROW

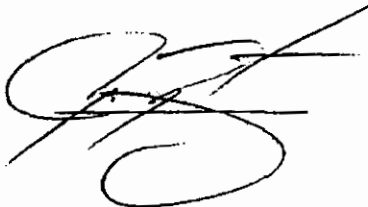
To Whom It May Concern:

|| This letter is regarding the Termination letter sent to the City of Newport Beach on May 8, 2009. This letter was sent from T-Mobile by mistake, the License was never terminated and remains in full force and effect. || ←

Please acknowledge your agreement with the forgoing in the space provided below and return an original signed copy of this letter to our office in the envelope provided.

If you have any questions relating to this letter, please contact Kira Stotelmeyer, at 949-295-2724.

Accepted and Signed



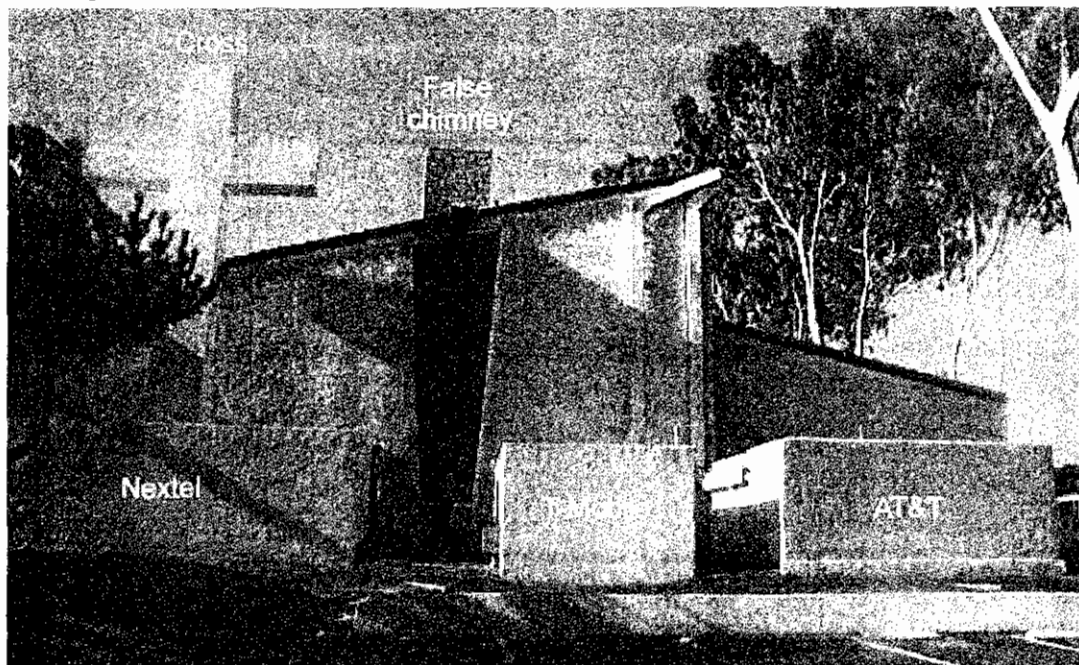
8.31.09
Date

Accepted and Signed

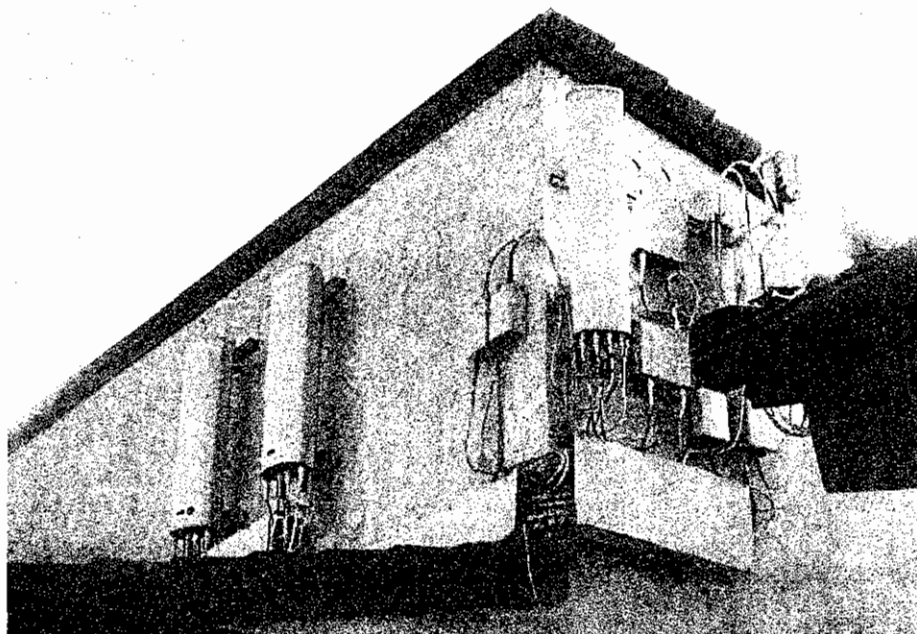
Date

Existing T-Mobile site at Harbor Christian Church

Equipment enclosures viewed from north

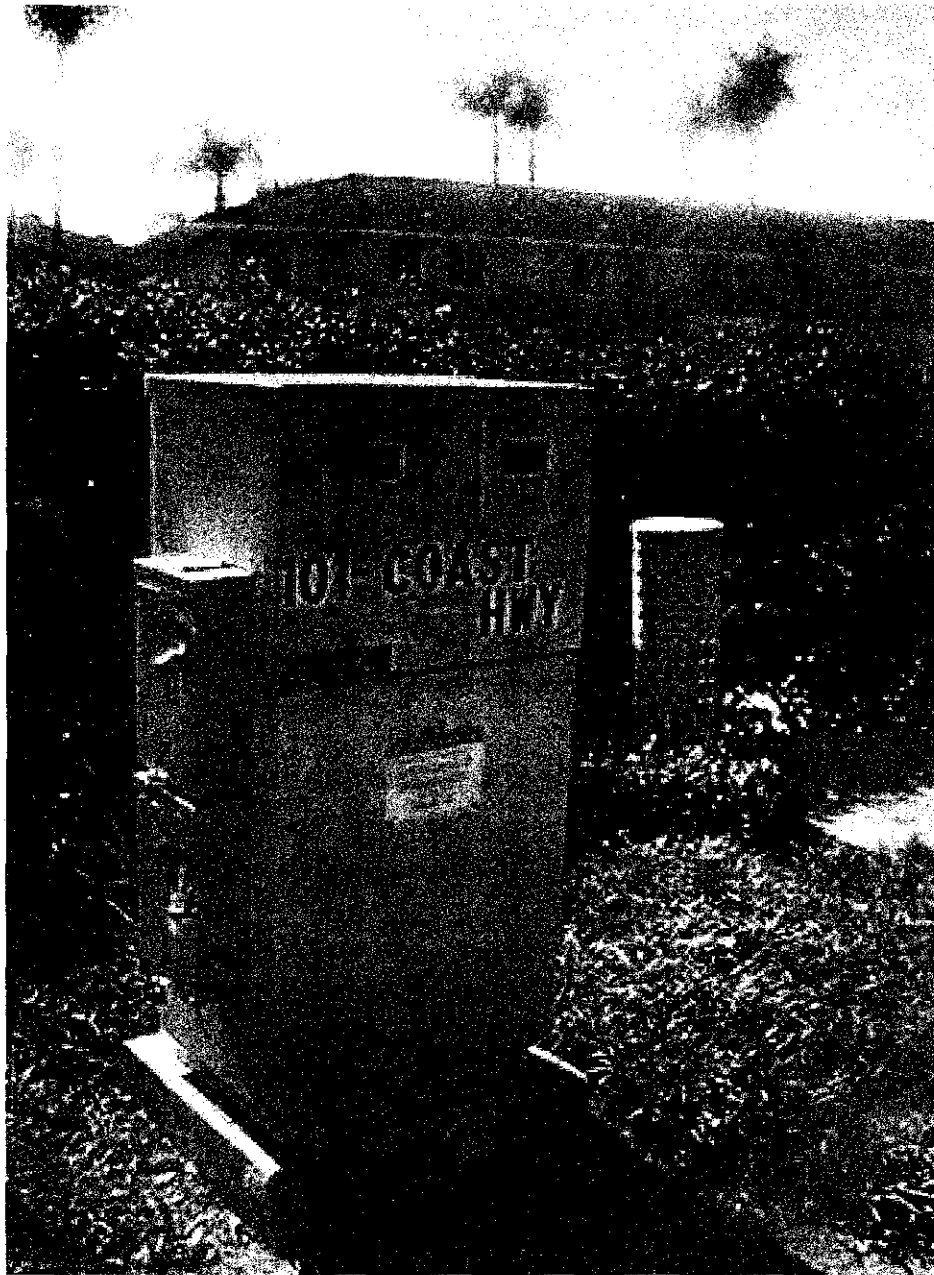


Exterior antennas on south face



This facility, never approved by the Coastal Commission, is along Irvine Avenue just a block north of where T-Mobile says coverage is inadequate. No other cell phone provider seems to have a problem in the area.

Proposed utility boxes



Utility box and ventilator stack supporting a Sprint wireless facility, never approved by the Coastal Commission, adjacent to the bridge over Newport Harbor on Coast Highway. The T-Mobile proposal calls for adding *two* of these "Myers boxes" to a beautifully landscaped coastal view road where there are currently no above ground utilities other than the streetlights.

CALIFORNIA COASTAL COMMISSION

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

W 14c

Filed: July 26, 2010
49th Day: September 13, 2010
180th Day: January 22, 2011
270th Day: April 22, 2011
Staff: John Del Arroz - LB
Staff Report: January 20, 2011
Hearing Date: February 9, 2011
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-10-110

APPLICANT: T-Mobile West Corporation

AGENT: Sequoia Deployment Services

PROJECT LOCATION: On the northerly (inland side) of the right of way along Irvine Avenue near the intersection with Private Road. Located near the Upper Newport Bay Regional Park. Newport Beach, Orange County.

PROJECT DESCRIPTION: Removal of existing concrete light pole, and installation of a new steel light pole of the same dimensions with two mounted panel antennas, a 11' x 7' x 8' underground equipment vault, two above ground 17" x 20" x 48" electrical meters, and two vault vent stacks.

LOCAL APPROVAL: Newport Beach Telecommunication Permit No. 2007-001

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission **APPROVE** a coastal development for the proposed development with **SIX (6) Special Conditions** regarding: **1)** co-location of antennas; **2)** future redesign of wireless facility; **3)** permit compliance; **4)** construction-phase debris; **5)** future development; and **6)** liability for costs and attorney fees. As conditioned, the proposed development does not adversely affect visual resources, public access and recreation, or the adjacent wetlands of the Upper Newport Bay Regional Park. **See Page Two for the motion to carry out the staff recommendation.** The applicant agrees with the staff recommendation. Staff recommends that the Commission find that the proposed development, as conditioned, conforms with the Chapter 3 policies of the Coastal Act and previous Commission approvals, and will not prejudice the City's ability to prepare an LCP.

STAFF NOTE:

The project was previously scheduled to be on the Consent Calendar on October 13, 2010, at the Commission's hearing in Oceanside. Due to public opposition, the Commission voted to remove the item from the Consent Calendar and move the item to the Regular Calendar at a later meeting. The applicant has agreed to extend the 180 day time limit to process the permit application to 270 days. Therefore, the Commission must act on the application by April 22, 2011.

Three letters of opposition from members of the public were submitted (**Exhibits 8, 9, 10**), with eight (8) main points:

- 1) the City's local approval is not valid
- 2) there is not sufficient need for the facility
- 3) the facility could be easily located outside of the coastal zone
- 4) the project is inconsistent with a park designation
- 5) the project will have impacts on traffic safety
- 6) the project will result in visual impacts to users of the park and designated scenic views in the Land Use Plan
- 7) an excess of antennas may be co-located on the site in the future
- 8) the project will have visual impacts on adjacent private residences.

Staff has reviewed the claims made by the opposition, and has determined that they are not sufficient to warrant an alteration of the staff recommendation for approval. However, staff did add Special Condition No. 5, regarding permit requirements for future improvements, to be sure the Commission is involved with any future additions to the subject light pole/antenna. The issues raised by the opposition are addressed in more detail in the findings below.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Newport Beach Telecommunications Permit
2. City of Newport Beach certified Land Use Plan

LIST OF EXHIBITS:

1. Vicinity Map
2. Design of Pole and Antenna
3. Site Plan
4. Coverage Map
5. Photograph of Existing Pole
6. Email from City Planner Janet Brown
7. Letter from applicant
8. Letter from Mr. Tabbert
9. Letter from Mr. LaFrance
10. Letter of opposition from residents of Private Road

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 Coastal Development Permit No. 5-10-110 pursuant to the staff recommendation."***

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the 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 on which the Commission voted on the application. 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

BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant agrees on behalf of itself and all successors and assigns to cooperate with other communication companies in co-locating additional antennas and/or equipment on the project site in the future, provided 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

BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant agrees on behalf of itself and all successors and assigns that where future technological advances would allow for reduced visual impacts resulting from the proposed telecommunication facility, the applicant (or its successor/assignee) shall make those modifications which would reduce the visual impact of the proposed facility. In addition, the applicant (or its successor/assignee) agrees that if, in the future, the facility is no longer needed, the applicant (or its successor/assignee) 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 (or its successor/assignee) 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.

4. Construction Responsibilities and Debris Removal

By acceptance of this permit, the permittee agrees that the permitted development shall be conducted in a manner that protects water quality pursuant to the implementation of the following BMPs:

- A. No demolition debris, construction materials, equipment, debris, or waste shall be placed or stored where it may be subject to wind or rain erosion or dispersion.
- B. The permittee shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.
- C. All grading and excavation areas shall be properly covered and sandbags and/or ditches shall be used to prevent runoff from leaving the site, and measures to control erosion must be implemented at the end of each day's work.
- D. Washout from concrete trucks shall be disposed of at a controlled location not subject to runoff into coastal waters or onto the beach, and more than fifty feet away from a storm drain, open ditch or surface waters.
- E. Erosion control/sedimentation Best Management Practices (BMPs) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the sea.

- F. All construction equipment and materials shall be stored and managed in a manner to minimize the potential for discharge of pollutants. Any spills of construction equipment fluids or other hazardous materials shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible.
- G. During construction of the proposed project, no runoff, site drainage or dewatering shall be directed from the site into any street or drainage unless specifically authorized by the California Regional Water Quality Control Board.
- H. In the event that hydrocarbon-contaminated soils or other toxins or contaminated material are discovered on the site, such matter shall be stockpiled and transported off-site only in accordance with Department of Toxic Substances Control (DTSC) rules and/or Regional Water Quality Control Board (RWQCB) regulations.

The permittee shall undertake the approved development in accordance with this condition.

5. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-10-110. Pursuant to Title 14 California Code of Regulations Section 13253(b) (7.5), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-10-110. Accordingly, any future improvements to the new steel light standard, mounted panel antennas, electrical meters, and vent stacks authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-10-110 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. Liability for Costs and Attorneys Fees

The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The proposed project would co-locate a new wireless telecommunications facility with a new light pole at the location of an existing light pole, on the landward side of Irvine Avenue, across the road from the Upper Newport Bay Regional Park West (**Exhibit 1**). An entrance to the Brown Trail, which runs towards the northeast along the boundary of the park, is located approximately 200 feet to the southwest of the project site along the bayward side of the road. Landward of the project site are single family residences located along Private Road.

The proposed project is the removal of the existing 29'9" high cement light pole and replacement with a new steel light pole of the same dimensions at the same location to support two mounted panel antennas. Additional equipment includes one 11' x 7' x 8' underground vault, two new above ground electrical meters, and two new vault vent stacks. All equipment will be placed in the public right-of-way. As described more fully in the public access findings below, most of the ground-level equipment – except for the two vent stacks - is underground or outside of the existing sidewalk that crosses through the project site. The proposed project does not block physical or visual access to Upper Newport Bay. The proposed antennas do not contribute significantly to the bulk of the light pole (**Exhibit 2**).

Claims made by opponents to the project state that the project does not have the requisite local approvals. Janet Johnson Brown, a planner at the City of Newport Beach, has reviewed the claims made by the opponents, and has stated that the project has received a telecom permit and encroachment permit from the City of Newport Beach, and the City has given the project its approval in concept(**Exhibit 6**).

B. Need for Proposed Development

The applicant has stated that the proposed development would serve to enhance coverage around the project site. More specifically, the project is designed to address a reduction in signal strength along Irvine Ave which results in dropped calls. The coverage map submitted (**Exhibit 4**) shows a lack of signal coverage in the immediate vicinity of the subject site.

Opponents to the project claim that significant coverage exists currently at the site. The opponents state that T-Mobile antennas are currently located at Harbor Christian Church¹, located approximately ½ mile to the northeast of the subject site, and additionally have submitted a picture showing a T-Mobile cell phone with 6 bars of coverage. Additionally, the applicants state that the proposed project is located within a short distance of both the boundary of the City of Newport Beach, and the boundary of the Coastal Zone.

The applicant has responded to the issue of need for coverage at the site (**Exhibit 7**). The applicant states that adequate coverage is composed of two signals: the weak signal from the mobile cell phone to the stationary antenna, and the strong signal from the stationary antenna to the cell phone. The lack of coverage in the vicinity of the project site is due to inability of the stationary antenna to adequately receive signals from mobile antennas. Therefore, although the opponents have submitted pictures showing strong reception in the vicinity of the subject

¹ Permit status of development at Harbor Christian Church has been forwarded to Enforcement Staff for review

site, the other half of the equation – the ability of the cell phones to transmit to a stationary antenna – is not being adequately considered. The applicant states that a topographic low at the subject site has resulted in this coverage gap, and prevent the existing antennas at Harbor Christian Church, or alternative locations submitted by members of the public, from being able to adequately cover this portion of Irvine Ave.

The coverage maps submitted by the applicant do show a reduction in signal quality in the vicinity of the project site, and the dropped call maps show that there is a deficiency in coverage in the project vicinity. The proposed project would address this deficiency in signal, with minimal impacts to coastal resources, including scenic views along Irvine Ave. The proposed project is located near the boundary of the Coastal Zone, and the opponents suggest that because of this the project should be relocated outside of the Coastal Zone. However, just because a project is located near the boundary of the Coastal Zone does not give support for denial of the permit in the proposed location. The applicant chose the proposed location in order to address a localized lack of coverage due to topography in the vicinity of the project site. The project does not raise issue with respect to policies within the Coastal Act; therefore there is no substantial reason for denying the proposed project based upon its location within the Coastal Zone.

C. Access

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast.

Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 states (in relevant part):

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.

The proposed development includes the placement of electrical meters and vault vent stacks within the public right of way (**Exhibit 3**). The proposed meters and vents do not obstruct access for pedestrians, and meets ADA requirements. The proposed electrical meters are located on the grass to the north side of the sidewalk, and as such do not obstruct the sidewalk. The vent stacks are located on the sidewalk; however they still provide sufficient room for pedestrians, as they are located on the edge of the sidewalk, where the sidewalk widens to a total of 9 feet. Therefore, the proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities.

Opponents to the project have made the claim that the proposed electrical meters and vent stacks are inconsistent with the Park designation in the city's LUP. However, the City's certified Land Use Plan designates the landward side of Irvine Avenue Single Unit Residential Detached. Only the bayward side of the street, adjacent to Upper Newport Bay and across the street from the project site, is designated as Open Space. The 'little park' that the opponents describe is actually a landscaped shoulder along the side of Irvine Avenue. The electrical meters will be placed within the landscaped shoulder along the side of Irvine Avenue, within

the City's right of way. The proposed development is not located within a designated park, and will not impact the ability of the public to access the Open Space area located across the street from the project site. Therefore, as proposed the development conforms with Sections 30210 and 30213 of the Coastal Act.

D. Visual Resources

Section 30251 of the Coastal Act states, in relevant 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 standard of review for the proposed development is the Coastal Act; however the visual protection policies located in the City of Newport Beach's certified Land Use Plan may be used for guidance.

Land Use Plan Policy 4.4.1-6 states, in relevant part:

Protect public coastal views from the following roadway segments: Irvine Avenue from Santiago Drive to University Drive

Land Use Plan policy 4.4.1-1 states:

Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.

The proposed project's impact on visual resources will be minimal. The proposed project involves the replacement of the existing concrete light pole with a new steel light pole of the same height and dimensions at the same location. The applicant proposes to mount panel antennas to the reconstructed pole, which would add only a few inches of bulk to the top of the antenna(**Exhibit 2**). The pole and accompanying vault vent stacks and electrical meters are located on the landward side of Irvine Avenue, adjacent to existing single family residential structures along Private Road, and as such do not obstruct scenic views of Upper Newport Bay from the perspective of drivers, pedestrians along the sidewalk, or pedestrians at the Brown trail.

Opponents to the project state that the proposed electrical meters and vent stacks would result in impacts to traffic safety due to obstruction of line of sight before the entrance to Private Road. The applicant has submitted a view analysis of the proposed traffic impacts (**Exhibit 7**). The analysis shows that the proposed electrical meters and vent stacks do not obstruct the intersection of Private Road and Irvine Ave, and would therefore not obstruct a driver's views of the intersection. The City of Newport Beach is ultimately responsible for ensuring that structures constructed in their right-of-way do not create a traffic safety issue. The Commission notes the City has granted approvals for the proposed facility in the proposed location. If traffic safety issues are a remaining concern, those should be raised with the City, and, if the City decides the facility needs to be redesigned and/or relocated to address traffic safety, the new location –if in the coastal zone- would need to be reviewed by the Commission for consistency with the Coastal Act.

The opponents claim that the proposed project would result in visual impacts to a designated Scenic View Road and impacts to users of the park. As described above, the project is located on the landward side of Irvine Ave, within the City's right of way in a landscaped shoulder located adjacent to single family residences. The proposed project would result in the erection of two new 3' tall vent stacks and two new 5' tall electrical meters within the right of way on the landward side of Irvine Ave. The structures are set against a wall and vegetation covered slope leading to the single family residences, and would not obstruct scenic coastal views, including those of the bay and landscape, for pedestrians, drivers, or users of the adjacent Brown Trail. The opponents have also claimed that the project will result in impacts to existing private views from the single family residences along Private Road; however the Commission has consistently held that private views are not protected under the Coastal Act. 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 (and all successors and assigns) agree 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. . Of course, the visual impacts associated with a co-located facility compared with another location would also need to be analyzed to determine which option has the least impact. Special Condition Two requires the applicant (or its successor or assignee) to agree 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.

As specified in California Code of Administrative Regulations Section 13253, addition of antennas to an existing structure would be exempt from permit requirements, and would therefore be exempt from further Commission review. The proposed project would result in a small increase in the bulk of the light standard, and would therefore not pose a significant impact to visual resources. However, future co-location of additional antennas onto the light

pole in the future may result in a significant increase in the number of attached antennas. Without Commission review, this may result in significant increased visual impacts. Therefore, the Commission imposes **Special Condition 5**, requiring Commission review of changes to the proposed development. Therefore, as conditioned, the Commission finds the project is consistent with Chapter 3 policies of the Coastal Act with respect to protecting visual resources.

E. Water Quality

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed work will be occurring in a location where there is a potential for a discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be carried into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction and post-construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters and for the use of on-going best management practices following construction. As conditioned, the Commission finds that the development conforms with Sections 30230 and 30231 of the Coastal Act.

F. Sensitive Habitat Area

Section 30230 requires the protection of the marine resources and biological productivity in wetland areas like Upper Newport Bay.

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.

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.

The proposed project is located across the road from the Upper Newport Bay Regional Park West. The City's Certified Land Use Plan designates the Upper Newport Bay as an Environmental Study Area, an area which "may be capable of supporting sensitive biological resources", and describes Upper Newport Bay as "one of the largest coastal wetlands remaining in southern California and is an ecological resource of national significance."

No work for the proposed project will take place within or directly adjacent to the Park, and the proposed project involves no filling of wetlands or displacement of any habitat. The proposed pole is in the same place as the existing light pole and is compatible with preservation of the habitat in Upper Newport Bay Regional Park West. Additionally, a report issued by the applicant's consultant, Environmental Assessment Specialists, indicates that the project will not result in impacts to wetlands or to any sensitive biological resources.

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 wetland area. As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms with Section 30240(b) of the Coastal Act.

G. Costs and Attorneys Fees

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. See *a/so* 14 C.C.R. § 13055(e). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes Special Condition 6, requiring reimbursement of any costs and attorneys fees the Commission incurs "in connection with the defense of any action brought by a party other than the Applicant/Permittee ... challenging the approval or issuance of this permit."

H. Local Coastal Program

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. 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.

I. California Environmental Quality Act (CEQA)

Section 13096 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.

In this case, the City of Newport Beach is the lead agency and the Commission is the responsible agency for the purposes of CEQA. The City of Newport Beach issued a determination that the project was ministerial or categorically exempt on February 2, 2010. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

Overview



Subject Site



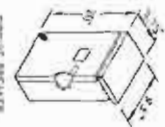
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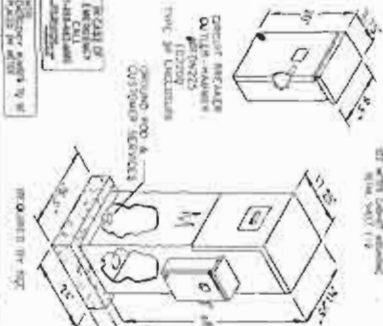
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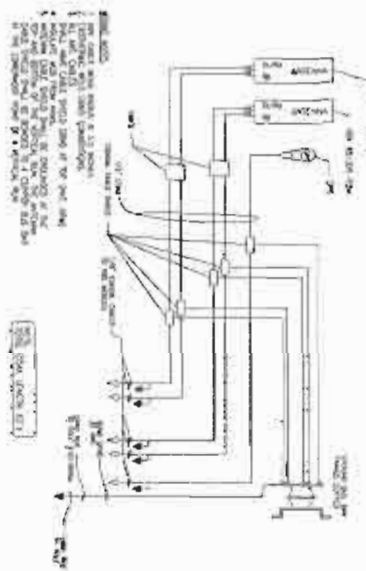
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SCALE: 1/4" = 1'-0"

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DUAL, DUAL-EX TOWER
MOUNTED AMPLIFIER RAILBAND

SCALE: 1/4" = 1'-0"

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Coastal Commission

EXHIBIT # 2

PAGE 1 OF 1

LA13163A

POLE #1013PBM

(CNS# SLC 2008)

DATE: 10/10/08

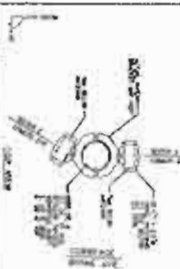
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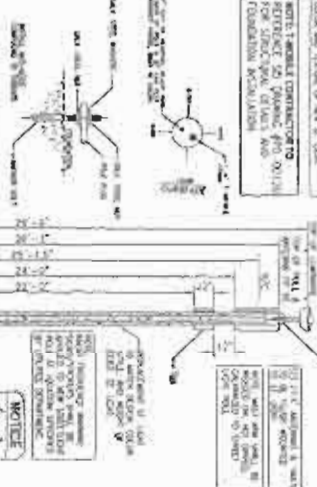
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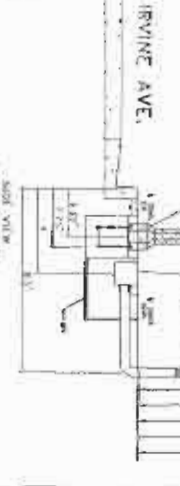
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SCALE: 1/4" = 1'-0"

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DUAL, DUAL-EX TOWER
MOUNTED AMPLIFIER RAILBAND

SCALE: 1/4" = 1'-0"

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LA13163A

POLE #1013PBM

(CNS# SLC 2008)

DATE: 10/10/08

DESIGNED BY: [Signature]

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SCALE: 1/4" = 1'-0"

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LA13163A

POLE #1013PBM

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LA13163A

POLE #1013PBM

(CNS# SLC 2008)

DATE: 10/10/08

DESIGNED BY: [Signature]

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APPROVED BY: [Signature]

SCALE: 1/4" = 1'-0"

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T-Mobile
Get more from life®

Cable Engineering Services

- **Good** because that study's results **don't** fit with those the government has put forward

SEQUOIA

One should also note that, in all cases, the β values are positive, indicating that the probability of a firm's being audited increases with the size of the firm.

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Journal of Management Education

LA 12103A
POL E #410139PBM

(CRB# 3LC 2006)

SECRET

SITE PLAN

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1

Drive Test Data with LA13163A Light Standard Predicted Coverage

T-Mobile



COASTAL COMMISSION

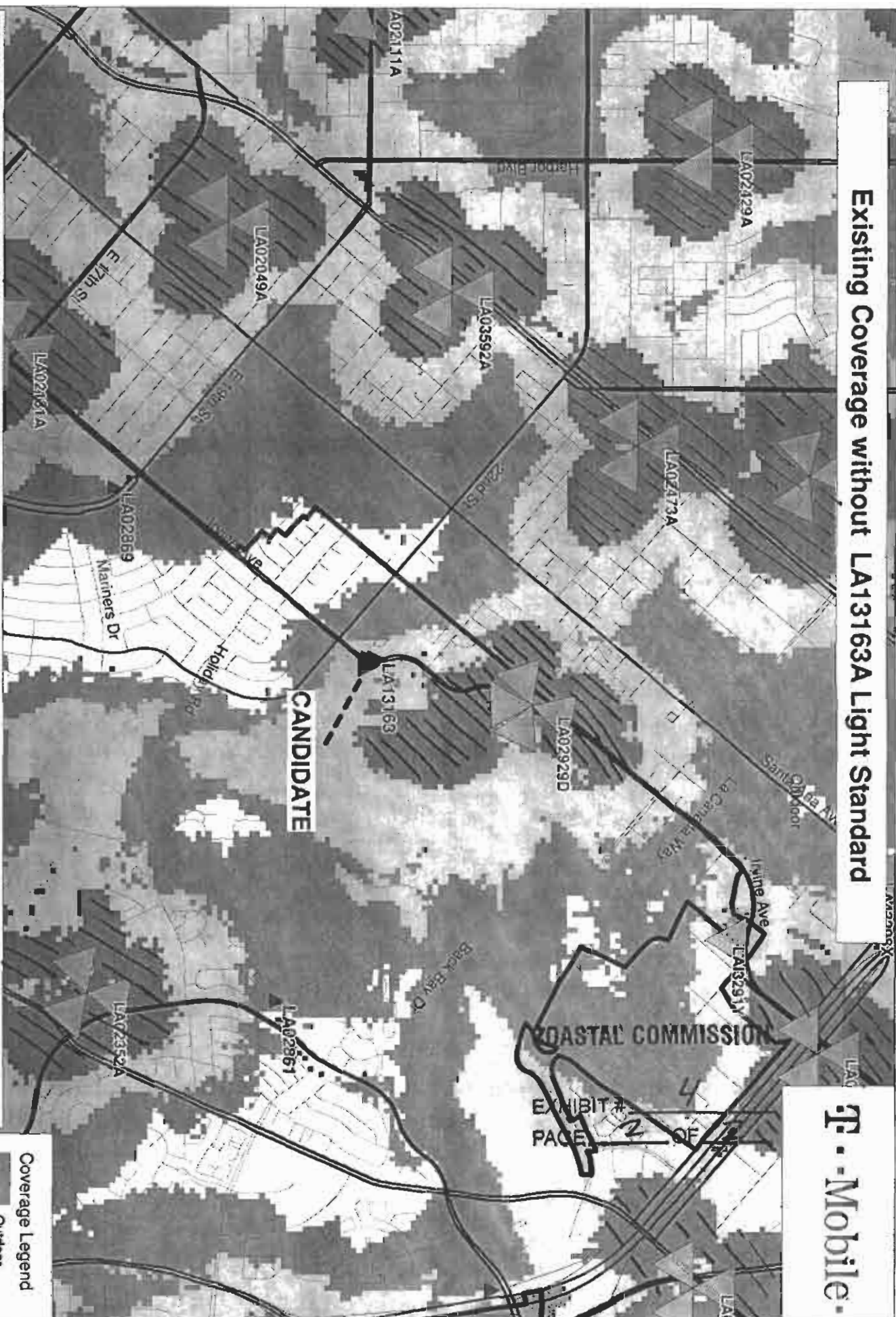
EXHIBIT # PAGE 1 OF 2

This information, property of T-Mobile USA, Inc is confidential and is intended solely for the use of the individual or entity to whom it is addressed. Any other use or distribution of this information is strictly prohibited. This map predicts and approximates our wireless coverage area outdoors, which may change without notice. It may include locations with limited or no coverage. Our maps do not guarantee service availability. Even within a coverage area, there are several factors, such as: network changes, traffic volume, service outages, technical limitations, signal strength, your equipment, terrain, structures, weather, and other conditions that may interfere with actual service, quality, and availability, including the ability to make, receive, and maintain calls.

Existing Coverage without LA13163A Light Standard

T-Mobile

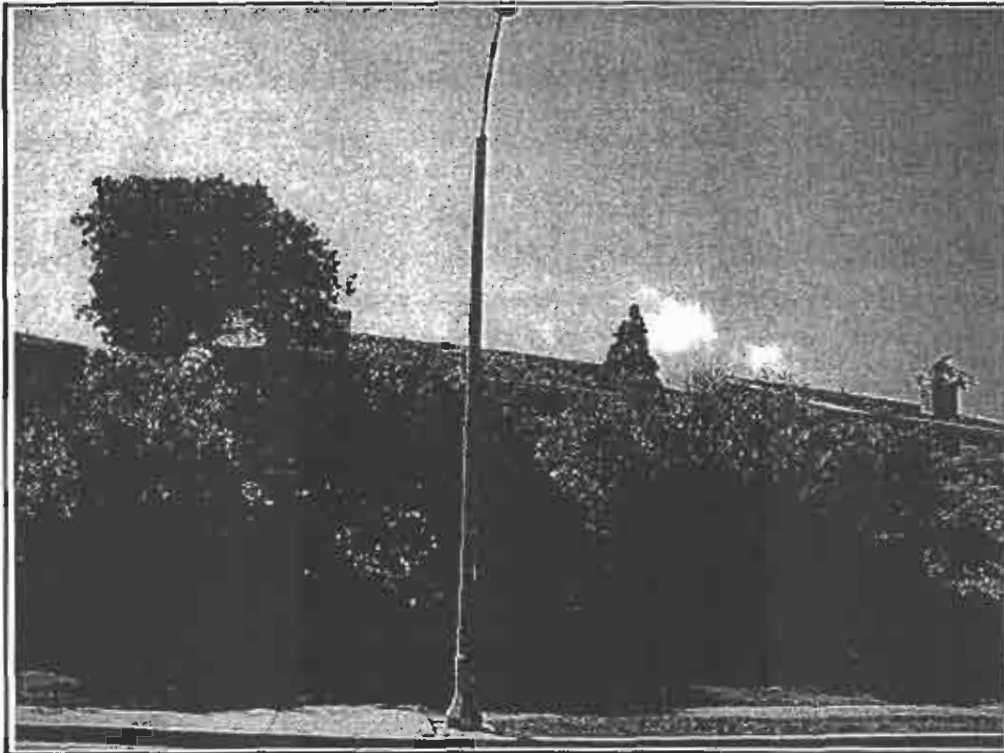
EXHIBIT # 4
PAGE 2 OF 2



Coverage Legend

- Outdoor
- In Vehicle
- In Building

This information, property of T-Mobile USA, Inc is confidential and is intended solely for the use of the individual or entity to whom it is addressed. Any other use or distribution of this information is strictly prohibited. This map predicts and approximates our wireless coverage area outdoors, which may change without notice. It may include locations with limited or no coverage. Our maps do not guarantee service availability. Even within a coverage area, there are several factors, such as: network changes, traffic volume, service outages, technical limitations, signal strength, your equipment, terrain, structures, weather, and other conditions that may interfere with actual service, quality, and availability, including the ability to make, receive, and maintain calls.



VIEW OF SITE FROM EAST



VIEW OF SITE FROM SOUTH

COMMISSION

5
 1 OF 1

John Del Arroz

From: Brown, Janet [JBrown@newportbeachca.gov]
Sent: Tuesday, August 17, 2010 4:11 PM
To: John Del Arroz
Cc: Torres, Michael
Subject: RE: T-Mobile Pole @ 2101 1/2 Irvine Ave
Follow Up Flag: Follow up
Flag Status: Completed
Attachments: TP2007-001 Appr.pdf

Good afternoon, John.

The telecom permit for this project has not expired and is still valid. I believe you were provided with a copy of the telecom permit with the AIC that was submitted to your office. I've attached a copy of the telecom permit for your convenience. You'll notice there is no expiration date.

The other required local approval for the project would be the encroachment permit issued by the Public Works Department to allow construction of the project in the public right-of-way. I have confirmed with Public Works that this permit is also still valid, pending action by the Coastal Commission. We might need to update the contractor's information and/or review any revised plans if any changes are required based on the Coastal Commission's review. If Coastal Commission approval is not granted, then the encroachment permit will be closed without action.

Please let me know if you need any other information or have any questions. Thank you.

Janet Johnson Brown
Associate Planner
City of Newport Beach
(949) 644-3236
jbrown@newportbeachca.gov

COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 1

John Del Arroz

From: Paul Gerst [paul.gerst@sequoia-ds.com]
Sent: Friday, December 10, 2010 2:06 PM
To: John Del Arroz
Subject: FW: LA13163A Irvine Avenue // Coastal Submission (1 of 2)
Attachments: LA02929 Letter of LUP Approval and COAs 3-22-06.pdf; LA02929 Harbor Christian Church Photosims Rev2 (2).pdf; LA13163 Private Road Traffic Views.pdf

Reduced attachments

Paul Gerst
 Sequoia Deployment Services, Inc.
 Telephone: 949.290.0602
 Facsimile: 949.753.7203
 www.sequoia-ds.com

From: Paul Gerst
Sent: Friday, December 10, 2010 1:59 PM
To: 'John Del Arroz'
Subject: FW: LA13163A Irvine Avenue // Coastal Submission (1 of 2)

John – Here is what I have so far:

1) Permitting status of neighbor site: Neighbor site is T-Mobile LA02929 Harbor Christian Church, 2401 Irvine Avenue. I attached the plans, photo-sims and city permits. There is no record of any permitting review done by the coastal commission.

2) Traffic sight lines: I reviewed the plans and have attached photos depicting a cone placed at the approximate location of the closest meter box. As you can see, it is beyond the curve of the existing hill and is not visible (and hence not blocking views of traffic) from the intersection of Irvine Avenue and Private Road until you are well into the intersection. To the extent the vent stacks are even more to the north and west due to the continuing curve of the road, they too are not visible.

3) Pedestrian and ADA access: All proposed ROW equipment satisfies ADA requirements for clearance and grade. The meter pedestals are proposed in the grass area, not the sidewalk, so will not impeded access. And while the vent stacks are at the west edge of the sidewalk, the sidewalk is nine feet wide at that point due to the vault and there is no blockage of ADA or pedestrian access.

4) Need for the site: The drive test data, coverage maps, dropped calls, etc. have been previously submitted (copies attached). The coverage issue we are trying to address here is not only improved coverage in the area but also a localized uplink problem from the handset to the base station due to the topography of the area.

The cell network is a two way radio communication between the handset and the base station. The base stations are built with a combination of antennas and electronic equipment. The electronic equipment includes radio receivers and transmitters that provide various channels for customers to use for voice or data communication. A typical base station design consists of sectorized transmission patterns called "sectors" at 120 degrees apart. Each sector covers a portion of the area.

COASTAL COMMISSION

12/20/2010

EXHIBIT # 7
 PAGE 1 OF 5

gain antennas which for its construction specifications, to concentrate maximum power right in front of the antenna (main lobe) and power decrease toward the antennas sides (side lobe). At any given time a cell phone user could be located at the main lobe (maximum power) or at a side lobe (low power) and as a result a handset can register more or less bars on the its screen. If the user is located at a taller structure is more likely to receive stronger signal not only from nearest base station but from a numerous of distant ones.

Base stations are capable of handling multiple, simultaneous calls with handsets and operate at higher power levels with high-gain antennas (akin to high power spot lights). The hand sets operate at low power with omni-directional antennas (akin to a night light). Thus it is easier for the handset to see the base station due to its much higher power levels (appx 1000 times higher). The majority of dropped calls are a result of a failure of the handset to be seen by the base station due to location, terrain, physical obstruction. This is referred to as "uplink" or "reverse link." The problem is not that the handset can not see the base station (as evidenced by the photo of four bars submitted by the opposition, the handset can in fact see the base station), but rather that the base station can not see the handset due to the lower power of the handsets and the drop in elevation of the road topography. These types of uplink problems are not diagnosed by coverage bars on the handset but rather by dropped call data registered from the base stations. The dropped call data for this area is about 1000 calls per month dropped from neighboring sites.

I have also contacted the city and Irvine Avenue is an arterial ingress/egress out of the city. I have attached traffic counts for the major exit points from the city indicating that the Irvine Avenue/Campus route in fact carries the most traffic out of the city (this is north of the site location with several additional streets adding traffic, so the vehicle counts at Private road will be lower.) Given that Irvine/Campus has the fewest lights, is centrally located in the city (Newport is to the north and Jamboree and MacArthur to the south) and has the quickest access to the 55/405 freeway, this is not surprising that it is one of the main arterials for city traffic. And vehicle traffic means cell phone use; in addition to improving coverage in the overall neighborhood, the site location is intended to address the uplink problem as well and significantly reduce the dropped calls in the area.

5) T-Mobile Customer Input – as I indicated, T-Mobile is contacting their customers in Newport Beach for letters in support of the project. I will be submitting those at a later date as I do not have them yet.

Paul Gerst
Sequoia Deployment Services, Inc.
Telephone: 949.290.0602
Facsimile: 949.753.7203
www.sequoia-ds.com

COASTAL COMMISSION

EXHIBIT # 7
PAGE 12 OF 5

SITE PHOTOGRAPHS FOR LA13163A IRVINE AVE
2101 1/2 IRVINE AVE NEWPORT BEACH
TRAFFIC VIEW PHOTOS FROM PRIVATE ROAD



VIEW OF APPROXIMATE LOCATION OF METER PEDESTAL, ± 91 FEET N FROM C/L PRIVATE ROAD, ± 9 FEET W OF CONCRETE ROAD EDGE



VIEW OF METER PEDESTAL LOCATION FROM ANTENNA LOCATION

SITE PHOTOGRAPHS FOR LA13163A IRVINE AVE
2101 1/2 IRVINE AVE NEWPORT BEACH
TRAFFIC VIEW PHOTOS FROM PRIVATE ROAD



VIEW FROM C/L PRIVATE ROAD AT LIMIT LINE; NO VIEW OBSTRUCTION



VIEW FROM VEHICLE DRIVER SEAT (1996 TAHOE) AT LIMIT LINE

SITE PHOTOGRAPHS FOR LA13163A IRVINE AVE
2101 1/2 IRVINE AVE NEWPORT BEACH
TRAFFIC VIEW PHOTOS FROM PRIVATE ROAD



VIEW FROM VEHICLE (1996 TAHOE) AFTER ENTERING INTERSECTION, LIMIT LINE IS APPROXIMATELY MID-POINT OF VEHICLE, LOCATION OF METER PEDESTAL IS JUST VISIBLE.

Agenda Item: W14b (Oct. 13, 2010)

Application Number: 5-10-110

Position: AGAINST

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

RECEIVED
South Coast Region

OCT 7 - 2010

Attn: John Del Arroz (for distribution to the Commissioners)

**CALIFORNIA
COASTAL COMMISSION**

Dear Commissioners,

I am running for City Council in Newport Beach. In the course of my campaign I have met with and listened to the issues confronted by a great many of our residents, including Dr. Jim Mosher on Private Road, who has brought to my attention this application for installation of a cell site and associated equipment on a City-owned streetlight in a park area adjacent to the Upper Newport Bay Nature Reserve. As a Friend of the Back Bay we have worked hard to create a pleasant open-space environment, and the addition of a new cell site detracts significantly from the enjoyment of this area by residents and visitors alike.

In the present case, Dr. Mosher, a highly intelligent individual whose private bluff-top views of the Back Bay would be materially impaired by this project, has demonstrated to my satisfaction that T-Mobile already has near-perfect reception at the proposed location, making this a singularly inappropriate place for a new cell site. As in so many other things, City staff seems to have been asleep at the switch in allowing this project to progress to the extent that it has (local code is supposed to prevent unnecessary sites and minimize telecom impacts on both public and private views).

As I understand from Dr. Mosher, City staff was not only unaware of the need for Coastal Commission review, but has also neglected the City Charter requirement to seek City Council approval before making public property available for private commercial use. My understanding is that the Council has never voted on the underlying License Agreement, and I would like you to know that if elected I would be vote against it.

I urge you to reject this project.

Yours sincerely,



Mark Tabbert
20172 Spruce Ave
Newport Beach, CA. 92660
(949) 355-6073

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF 1

October 2, 2010

Craig LaFrance
2209 Private Road
Newport Beach, CA 92831
Cell Phone: 949-322-7964

Coastal Commission Hearing Oct. 13, 2010
Agenda Item No. W14b
Application No. 5-10-110 (T-Mobile West Corp.)
Craig LaFrance – Opposed to the Project

California Coastal Commission
South Coast District
P.O. Box 1450
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Attn: John Del Arroz, Coastal Program Analyst

Subject: Coastal Commission Hearing Oct. 10, 2010
Agenda Item No. W14b
Application No. 5-10-110

Gentlemen:

In reviewing the Staff Report for the subject application I am concerned that the City of Newport Beach has not presented an accurate representation of the circumstances surrounding the application to the Commission. Additionally, the document submitted to the Commission may not have had full City of Newport Beach review.

I request the Commission reconsider the recommendation to approve, considering the following:

- A. Traffic Safety: The proposed location of equipment (two 5' tall boxes) will block visibility of Southbound Irvine Avenue traffic as it approaches intersection to Private Road. The traffic approaches around a blind curve on Irvine Ave. and already presents a hazardous intersection for residents exiting Private Road to enter Irvine Ave. The equipment, two (4) foot high boxes mounted on (1) foot pedestals appears to be positioned directly in the view line of traffic approaching around the corner. Additionally, other proposed equipment installations appear to block the view of traffic entering Irvine Avenue from Private Road.

Opposition Point: I was not notified by the city concerning the development of the project so did not have the opportunity to express this observation. Has Newport Beach assured the Commission that due process has been followed in issuing a permit to the utility's developer? Has Traffic and Legal at Newport Beach been consulted concerning the increase in the traffic hazard? While this may not be a Commission concern it may be indicative that Newport Beach

has not diligently reviewed this project. It seems that traffic safety should be a first consideration for installations in a public right-of-way. Subsequent traffic accidents at the intersection may put the city at risk.

- B. Visual Impact: Under section "E" (Visual Resources) of the "Project Description" the Commission notes the "project's impact will be minimal", and further goes on to state "the Commission is concerned that cumulatively, installation of additional similar projects in the area could have adverse impacts on visual resources".

Opposition Point #1: The applicant (T-Mobile, et al) already has a location at Harbor Christian Church (at the Santa Isabel intersection with Irvine Ave.) two blocks away. This project is a second installation within two blocks and is not in keeping with the stated intent of the Commission to minimize such installations.

Opposition Point #2: The visual attractiveness of the area (benefitting the appearance of the Upper Newport Bay) is in part due to substantial underground installations of utilities in the adjacent neighborhood, eliminating the unsightly impact of overhead power lines and (shared) telecommunications lines. The Commission in recommending approval is, in fact, taking the first step in adversely affecting the visual impact by this addition. The installation of the proposed equipment boxes will certainly degrade the appearance of the small park at the proposed installation site. Users of the Upper Bay reservation will also experience deterioration in the quality of the appearance as they hike/bike along the adjacent trails.

Opposition Point #3: The application provides for sharing the installation with other telecommunications companies. There do not appear to be restrictions concerning the quantity or size of the equipment of additional parties participating in the use of the facility, only that they do not interfere with each other. I have observed a circumstance where permitted approval of a single radio broadcast tower subsequently resulted in a substantial array of antennae in an otherwise protected environment. The wording of the Newport Beach recommendation to the Commission provides T-Mobile with a product to market to other telecommunications companies (whether they use it or not?). I suspect this is a revenue driven activity (both for Newport Beach as well as T-Mobile and their developer), and is not based on a need for additional T-Mobile service in the area.

I strongly urge the commission to withhold approval and reexamine:

1. Is this a second installation within two blocks for T-Mobile? If so, why is that information not divulged to the Commission by both T-Mobile and Newport Beach?
2. Has Newport Beach properly followed procedures to warn residents of the project? The interference with traffic safety sends up a yellow (if not red) flag that due diligence was

COASTAL COMMISSION

not followed. Additionally, the interference of view on adjacent property owners does not seem to have been considered.

3. Is the open-ended offer to other telecommunications companies an exposure to unrestricted and uncontrolled additions to the pole and the site? Language in the Staff Report has the appearance that the permitted site can be expanded, sold, transferred, etc. without restriction. Once fully permitted, the removal of an unsightly, contentious or abandoned installation would likely involve expensive/extensive litigation to resolve. The Commission should require Newport Beach to reevaluate the contract terms and be sure all "T"s are crossed (e.g. City Council approval of a contract. We do not want another City of Bell here).

One reason for the existence of the Coastal Commission is to protect against unsightly utility rights-of-way detracting from protected environments. While substantial improvements are being made in the appearance and location of telecommunications installations in general, the Commission should not ignore the propensity of overzealous marketers to rush a municipality to permit an unnecessary, visually detractive installation.

Thank you for your consideration of the above.

Respectfully submitted,



Craig P. LaFrance
Cell Phone: 949-322-7964

COASTAL COMMISSION

Agenda Item: W14b (Oct. 13, 2010)
Application Number: 5-10-110
Position: AGAINST

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

RECEIVED
South Coast Region

OCT 7 - 2010

Attn: John Del Arroz (for distribution to the Commissioners)

CALIFORNIA
COASTAL COMMISSION

Dear Commissioners,

We urge you to remove from the Consent Calendar this questionable application for an uncalled for and redundant wireless facility that unnecessarily degrades the Coastal Zone.

Earlier written concerns submitted to the Long Beach office by our spokesperson, Dr. James Mosher, dating back as far as March 18, 2010, do not seem to be part of the present Staff Report, but our main reasons for objecting to this proposal can be summarized as follows:

1. There are very serious questions about T-Mobile's legal right to use the site.
 - a. The Newport Beach City Charter (EXHIBIT 1) requires City Council approval of all contracts, including Telecom License Agreements. As the City Clerk can confirm, the Agreement for private use of public property underlying the present proposal has never been approved at any public meeting of the Newport Beach City Council. City staff holds the required approval can be granted without meeting, vote, or documentation in apparent violation of the Brown Act.
 - b. Despite City Planner Brown's e-mailed assurances that there is no expiration date explicitly mentioned in the permit (TP2007-001) she forwarded to Coastal Plan Analyst Del Arroz, the permit says (EXHIBIT 2), and it was ordered printed on the plans, that it is issued subject to all conditions of the Uniform Building Code. Under both that and the nearly identical administrative section of the title of the Municipal Code under which it was issued (EXHIBIT 3) the permission becomes void if construction is not commenced within 180 days of issuance. This permit was issued in 2007, without thought of possible Coastal Commission review. The first attempt to commence construction was not announced until 2009.
 - c. City Planner Brown also refers to an encroachment permit for use of the public right of way. Although that permit, also issued in 2007, can perhaps be extended indefinitely at the discretion of the City's Public Works Director, it includes the condition "*#15. Any above ground utility facilities will require documented approval from the adjacent affected property owner(s).*" This project definitely affects coastal views from immediately adjacent bluff-top properties, and T-Mobile does not have approval from those homeowners.
 - d. Pre-approving an application for a project which does not yet have proper local approvals sets a poor precedent and may prejudice the local process.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 1 OF 10

2. The project is redundant with existing facilities.
 - a. The proposed site is on the 1 mile-long stretch of Irvine Avenue defining the western edge of the Upper Newport Bay Nature Reserve, a unique scenic and ecological treasure. This segment of Irvine Avenue is designated as a Coastal View Road in the City's Coastal Land Use Plan (EXHIBIT 4).
 - b. In 2006, the City (without Coastal Commission review) granted T-Mobile permission to expand an existing wireless site at a higher location at the exact mid-point of this 1-mile stretch (Harbor Christian Church wireless co-location facility). According to T-Mobile's application, use of that site would provide adequate coverage along the entire Coastal View Road portion of Irvine Avenue.
 - c. Overlapping with the request for use of the Harbor Christian Church site, the City offered T-Mobile use of the present City-owned site, two blocks to the south.
 - d. The promise to achieve coverage with the first site appears to have been fulfilled, with "6-bar" signal strength currently existing at the second site, which is the subject of the present review (EXHIBIT 5). The lowest outdoor signal strength observed anywhere along the 1-mile stretch of Coastal View Road is 3-4 bars, more than adequate for T-Mobile's equipment to function well.
 - e. T-Mobile's agents have subsequently attempted to justify the need for the second site by claiming there is a dropped call problem between the two sites (in the area where the signal strength is 3-4 bars). However 3-4 bars is a quite typical signal level for urban areas. The data offered in support of the dropped call claim, including that submitted to the Coastal Commission, shows only that T-Mobile experiences occasional dropped calls in all its antenna sectors. It does nothing to localize a problem to the present area, or to compare it to the number of dropped calls in any other randomly selected area.

3. The project unnecessarily impacts the coastal zone.
 - a. Already having a major facility operating at the exact mid-point of the coastal zone portion of Irvine Avenue, T-Mobile is now asking the Commission to approve a second facility illogically located in a low open-space park area under a bluff, within 0.1 mile (500 feet) of the southern terminus of the coastal zone.
 - b. The new facility will add unnatural elements to that park area, including not only the antennas themselves, but ventilator stacks and above-ground utility boxes. These will all add visual blight, and the latter, as currently proposed, will also create a significant traffic safety hazard at an already blind intersection.
 - c. The Commission is being asked to approve these additions when, as indicated above, T-Mobile has no demonstrable gap in coverage at the proposed site.
 - d. By comparison, T-Mobile has much lower signal strengths in numerous areas *outside* the coastal zone, for example in the area to the south, yet it is not asking to use any of the many non-coastal zone streetlights or traffic standards available in that area (EXHIBIT 6). Indeed, this long dormant application to address problems outside the coastal zone by adding a redundant facility within the coastal zone is the only proposal T-Mobile, with City staff's active encouragement, is currently pursuing in the whole of Newport Beach.

COASTAL COMMISSION

4. The proposed condition *requiring* co-location of future wireless facilities at this site (Special Condition III-1 in the Staff Report) is both ambiguous and in direct conflict with the condition of the local permit *prohibiting* co-location (EXHIBIT 7).
 - a. Since it was never reviewed or approved by the Coastal Commission, staff is possibly unaware of the existing major Harbor Christian Church wireless site at the mid-point of the coastal zone segment of Irvine Avenue. It would seem a more logical co-location site for future vendors than the present one, which is singularly ineffective because it is in a topographic hole at one extreme end of the coastal zone segment. Approving sites at the extreme southerly location would quite possibly require the Commission to approve a second site to serve the northern end of the coastal zone segment. Hence this co-location requirement appears to encourage adding two sites to the coastal zone where a single one might do.
 - b. The Staff Report also fails to define the radius over which co-location to this site would be desirable. Is staff asking the Commission to encourage other carriers to co-locate within the coastal zone to correct deficiencies outside the coastal zone as T-Mobile appears to be doing in the present case?

The Coastal Commission has previously denied wireless proposals where it could not be verified that the applicant had a substantial gap in coverage within the coastal zone and was proposing the solution least impactful on the coastal zone (for example, Application 5-09-103).

For the many reasons cited above, the undersigned feel this application requires closer scrutiny. We beg you to remove it from the Consent Calendar so that you can hear our concerns.

Yours sincerely,

Signature: Connie Skibba Printed name: CONNIE SKIBBA
 Address: 2218 Private Road Date: 10-2-10
President Service Company

Signature: Michael L. Skibba Printed name: Michael L. Skibba
 Address: 2218 Private Rd Date: 10-2-10

Signature: James M. Moser, Ph.D. Printed name: James M. Moser, Ph.D.
 Address: 2210 Private Road Date: 10/2/2010

Signature: Jim Barrett Printed name: Jim Barrett
 Address: 2202 Private Rd Date: 10/2/10 **COASTAL COMMISSION**

Signature: [Signature] Printed name: SAMUEL W. TATE
Address: 2322 PRIVATE RD. Date: 10/2/10

Signature: [Signature] Printed name: Joan A. Lyon
Address: 2316 Private Rd Date: 10-2-10

Signature: [Signature] Printed name: M. Craig Lyon
Address: 2316 PRIVATE ROAD Date: 10/2/10

Signature: [Signature] Printed name: Sunday Petrie
Address: 2301 Private Rd Date: 10/2/10

Signature: [Signature] Printed name: John Petrie
Address: 2301 PRIVATE RD Date: 10/2/10

Signature: [Signature] Printed name: JOHN BURTON
Address: 2317 PRIVATE RD, N.B. Date: 02-OCT-2010

Signature: [Signature] Printed name: NANCY CLARK
Address: 2317 Private Rd NB Date: 10/2/10

Signature: [Signature] Printed name: Cynthia BorCorman
Address: 2217 Private Rd NB Date: 10/3/10

Signature: [Signature] Printed name: ROBERT SPARKS
Address: 2201 PRIVATE Rd NB Date: 10/3/10

COASTAL COMMISSION

Signature: Julie N. Sparks Printed name: JULIE N SPARKS
Address: 2201 PRIVATE RD Date: 10/3/10

Signature: Darryl Shinder Printed name: Darryl Shinder
Address: 2329 PRIVATE RD. NB, CA 92660 Date: 10/3/10

Signature: Jacqueline Shinder Printed name: Jacqueline Shinder
Address: 2329 Private Road NB 92660 Date: 10/3/10

Signature: Val. Grady Printed name: Valerie Grady
Address: 2226 Private Rd. Date: 10/3/10

Signature: CRAK P. LAFRANCE Printed name: CRAK P. LAFRANCE
Address: 2209 PRIVATE ROAD Date: 10/3/10

Signature: JANET CENCEL Printed name: JANET CENCEL
Address: 2225 PRIVATE ROAD Date: 10/3/10

Signature: Del-Tha Tate Printed name: Del-Tha Tate
Address: 2322 Private Rd Date: 10/4/10

Signature: John Drake Printed name: John Drake
Address: 2323 Private Rd Date: 10/4/10

Signature: Christine Drake Printed name: Christine Drake
Address: 2323 Private Rd Date: 10/4/10

COASTAL COMMISSION

Signature: [Signature] Printed name: Jaclyn Drake
Address: 2323 Private Rd. Date: 10-4-2010

Signature: [Signature] Printed name: Truly Gold Boring
Address: 2300 Private Rd Date: 10-4-2010

Signature: [Signature] Printed name: MICHAEL SCHLESINGER
Address: 2309 PRIVATE ROAD Date: 10/4/10

Signature: [Signature] Printed name: Kathryn Schlesinger
Address: 2309 Private Road Date: 10-5/10

Signature: [Signature] Printed name: Jaime Chilton
Address: 2308 Private Rd. Date: 10/5/10

Signature: [Signature] Printed name: TALLIE Z. BORN
Address: 2209 Private Rd. Date: 10/6/2010

Signature: [Signature] Printed name: Cary Boring
Address: 2300 Private Road NPB Date: 10/6/10

Signature: [Signature] Printed name: SHERY Cagle
Address: 2291 Justin NPB Date: 10/6/10

Signature: [Signature] Printed name: Ben Cagle
Address: 2291 Justin NPB Date: 10/6/10

Signature: [Signature] Printed name: Timzee Gold EXHIBIT # 10
Address: 2322 Private Rd NPB Date: 10/6/10 PAGE 6 OF 16

COASTAL COMMISSION

EXHIBIT 1

CHARTER OF THE CITY OF NEWPORT BEACH

Section 421. Contracts. Execution.

The City shall not be bound by any contract, except as hereinafter provided, unless the same shall be made in writing, approved by the City Council and signed on behalf of the City by the Mayor and City Clerk or by such other officer or officers as shall be designated by the City Council.

(note: there is nothing in the "except as hereinafter provided" list that excludes wireless License Agreements from the Council approval requirement)

EXHIBIT 2

From page 5 of Newport Beach Telecommunications Permit No. 2007-001 (March 30, 2007)

Conditions:

6. The telecom facility shall comply with all regulations and requirements of Chapter 13 of the Newport Beach Municipal Code, the Americans with Disabilities Act (ADA), as well as the Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code and National Electrical Code.

EXHIBIT 3

**From Newport Beach Municipal Code Title 15
(Permit TP2007-001 was issued under Chapter 15.70)**

Chapter 15.02 Administrative Code

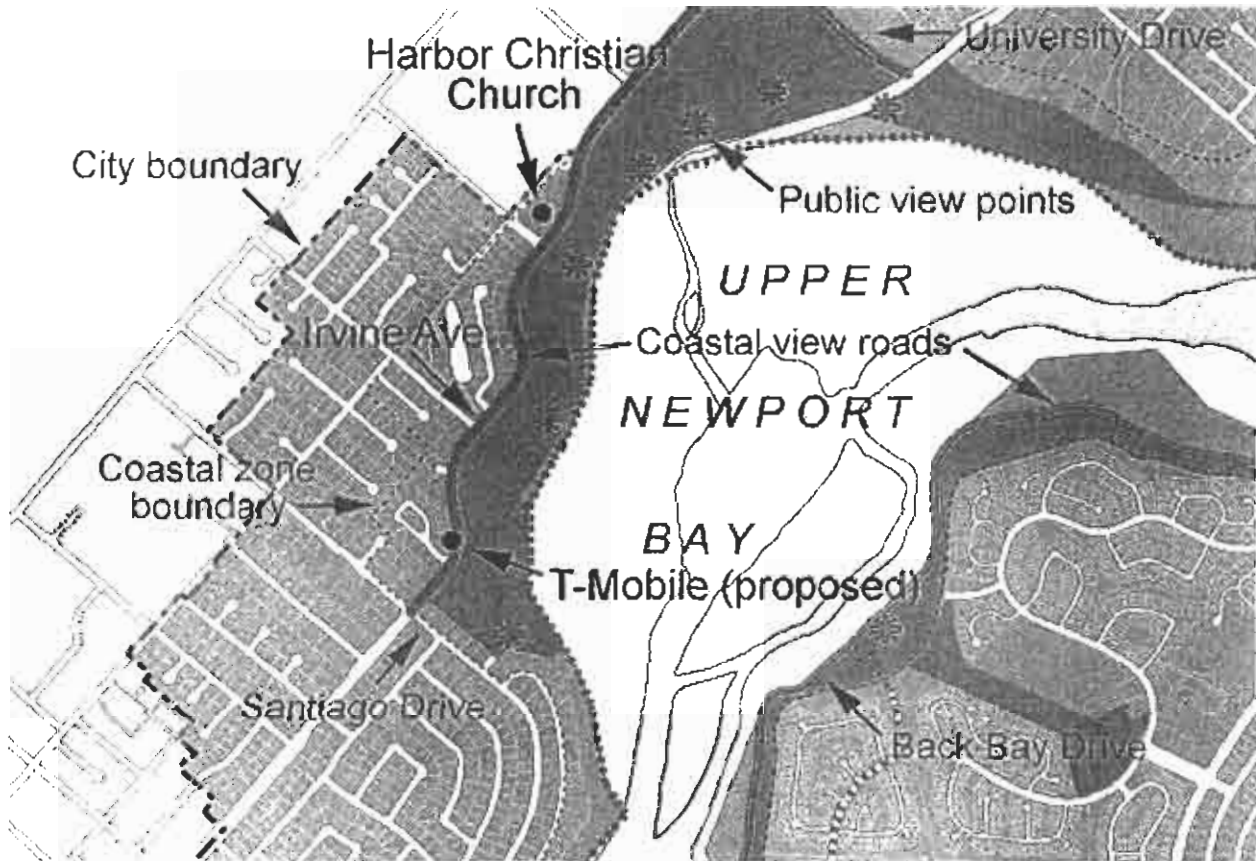
15.02.090 Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. The building official is authorized to grant, in writing, one extension of time, for a period not more than 180 days. The extension shall be requested in writing and justifiable cause demonstrated.

COASTAL COMMISS

EXHIBIT # 10
PAGE 7 OF 10

EXHIBIT 4:

Proposed site on Coastal Views map in *Coastal Land Use Plan* (Map 4-3_2)



T-Mobile already has a wireless installation, undisclosed in the application upon which the local approval is based, and unapproved by the Coastal Commission, at Harbor Christian Church, 2401 Irvine Ave.

That facility, at the mid-point of the 1-mile segment of Irvine Avenue bordering the west edge of the Upper Newport Bay State Marine Park and Nature Reserve, was said to be sufficient to cover the entire length. Now T-Mobile is asking for a second facility at the southern fringe of the Coastal Zone, apparently to improve coverage in the area outside the Coastal Zone.

The Coastal Commission should not encourage adding equipment within the Coastal Zone to solve problems outside it.

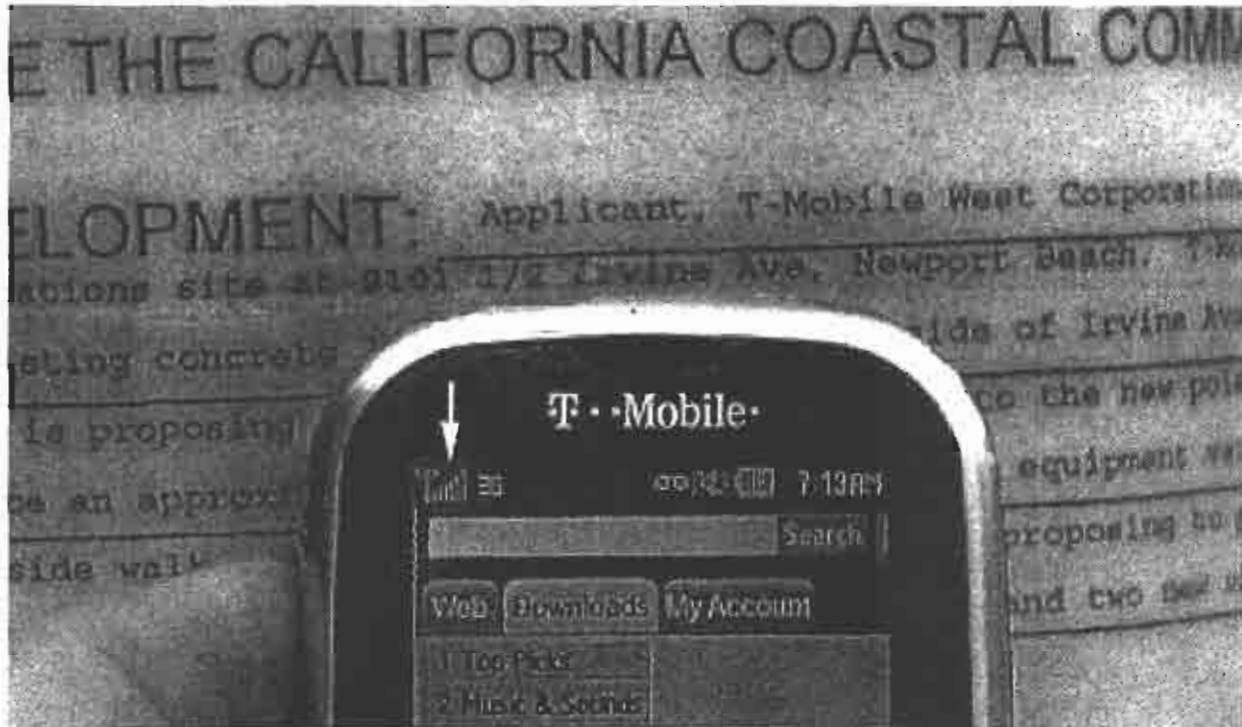
COASTAL COMMISSION

EXHIBIT # 10
PAGE 8 OF 10

EXHIBIT 5:

Existing signal strength at proposed location

T-Mobile's Harbor Christian Church facility, two blocks north on the same Coastal View road, already adequately serves the area.



Signal strength at the proposed location is currently "six bars" (arrow), the maximum T-Mobile's equipment can register.

See the website <http://newportcellsites.wikispaces.com/Signal+Strength+Survey> for additional examples of observed T-Mobile signal strengths along Irvine Avenue and elsewhere in Newport Beach.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 7 OF 10

EXHIBIT 6:

Example of a possible alternate location. The arrowed pole at the SE corner of the Irvine Ave/Santiago Drive intersection, as an example, is outside the coastal zone (which ends at this intersection, 200 yards [0.1 miles] south of the proposed location). It is higher, has minimal impact on views, and would better serve the area to the south, where T-Mobile signal strengths are much lower than anywhere in the coastal zone. T-Mobile's Government Affairs representative wrote of this particular location (e-mail, December 2, 2009): "This would work for us if we can get an antenna at a height of 35-feet (top of antenna) because there is an existing tree that would block the south sector."



Many more streetlights and traffic standards are available outside the Coastal Zone, to south.

EXHIBIT 7

From page 4 of Newport Beach Telecommunications Permit No. 2007-001 (March 30, 2007)

Findings:

1. The telecommunications facility as proposed meets the intent of Chapter 15.70 ... for the following reasons:

- ... Any future facility proposed to be located in the vicinity shall be a minimum of 1,000 feet from the facility approved by this permit so as to limit the adverse visual effects of proliferation of facilities in the **COASTAL COMMISSION**

EXHIBIT # 10
PAGE 10 OF 10