

CALIFORNIA COASTAL COMMISSION

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**Th6b**

Filed: April 7, 2011
49th Day: May 6, 2011
180th Day: October 4, 2011
Staff: John Del Arroz - LB
Staff Report: June 23, 2011
Hearing Date: July 13-14, 2011
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-11-063

APPLICANT: AT&T Mobility

AGENT: Wireless Development Resources, LLC

PROJECT LOCATION: 798 Dover Drive, Newport Beach, Orange County

PROJECT DESCRIPTION: Relocate six existing panel antennas to a new, 51 foot 5 inch high clock tower structure adjacent to the existing church building

LOCAL APPROVAL: City of Newport Beach Telecom Permit No. TP2010-003

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; and **5)** future development, and **6)** require a deed restriction against the property, referencing all of the Special Conditions contained in this staff report. As conditioned, the proposed development does not adversely affect visual resources, or public access and recreation. **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.

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. Site Plan
3. Visual Simulation

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 the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.***

STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. 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 and landowner(s) agree(s) on behalf of themselves and all successors and assigns to cooperate with other communication companies in co-locating additional antennas and/or equipment on the proposed development 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 and landowner(s) agree(s) on behalf of themselves 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. 5-11-063. 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. 5-11-063. Accordingly, any future improvements to the new tower structure, mounted panel antennas, 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. 5-11-063 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a

deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The proposed project will be located on the site of Newport Harbor Lutheran Church. Newport Harbor Lutheran Church is located at 798 Dover Drive, Newport Beach, at the intersection of Castaways Lane and Dover Drive, and is located to the north of Castaways Park, and to the west of the residential neighborhood located along Cape Andover, a public street.

The project includes relocation of six existing panel antennas from the existing screen enclosure mounted on the roof of the church office building, to a new, 51' 5" high, 10' x 10' square tower structure located adjacent to the existing church building (Exhibit 2), and removal of the screened enclosure and any additional unused related equipment on the roof. The applicant has stated that the proposed development would serve to enhance coverage around the project site, and has submitted a coverage map which indicates that the project would enhance coverage in the area.

The proposed project does not block physical or visual access to Upper Newport Bay. The proposed project is located landward/outside of the City of Newport Beach's Shoreline Height Limitation Zone (which restricts heights to 35 feet), and would not obstruct views from the designated public view point along Upper Newport Bay, located bayward of the proposed project. The applicant has submitted a view simulation from important viewpoints around the project site. While the project is visible from adjacent areas, the project will not block or impact views to or along the bay, and will not result in significant visual impacts (Exhibit 3).

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. 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 landowner (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 not pose a significant impact to visual resources. However, future co-location of additional antennas onto the structure 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.

B. Access

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. Therefore, as proposed the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. Recreation

The proposed development, as conditioned, does not interfere with public recreational use of coastal resources. The proposed development, as conditioned, protects coastal areas suited for recreational activities. Therefore, the Commission finds that the proposed development, as conditioned, is in conformity with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the promotion of public recreational opportunities.

D. Deed Restriction

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes an additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or

obligations imposed on the use and enjoyment of the land in connection with the authorized development.

E. Parks And Recreation Areas

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.

F. 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.

G. California Environmental Quality Act (CEQA)

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.

Google maps

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Newport Beach, CA 92663

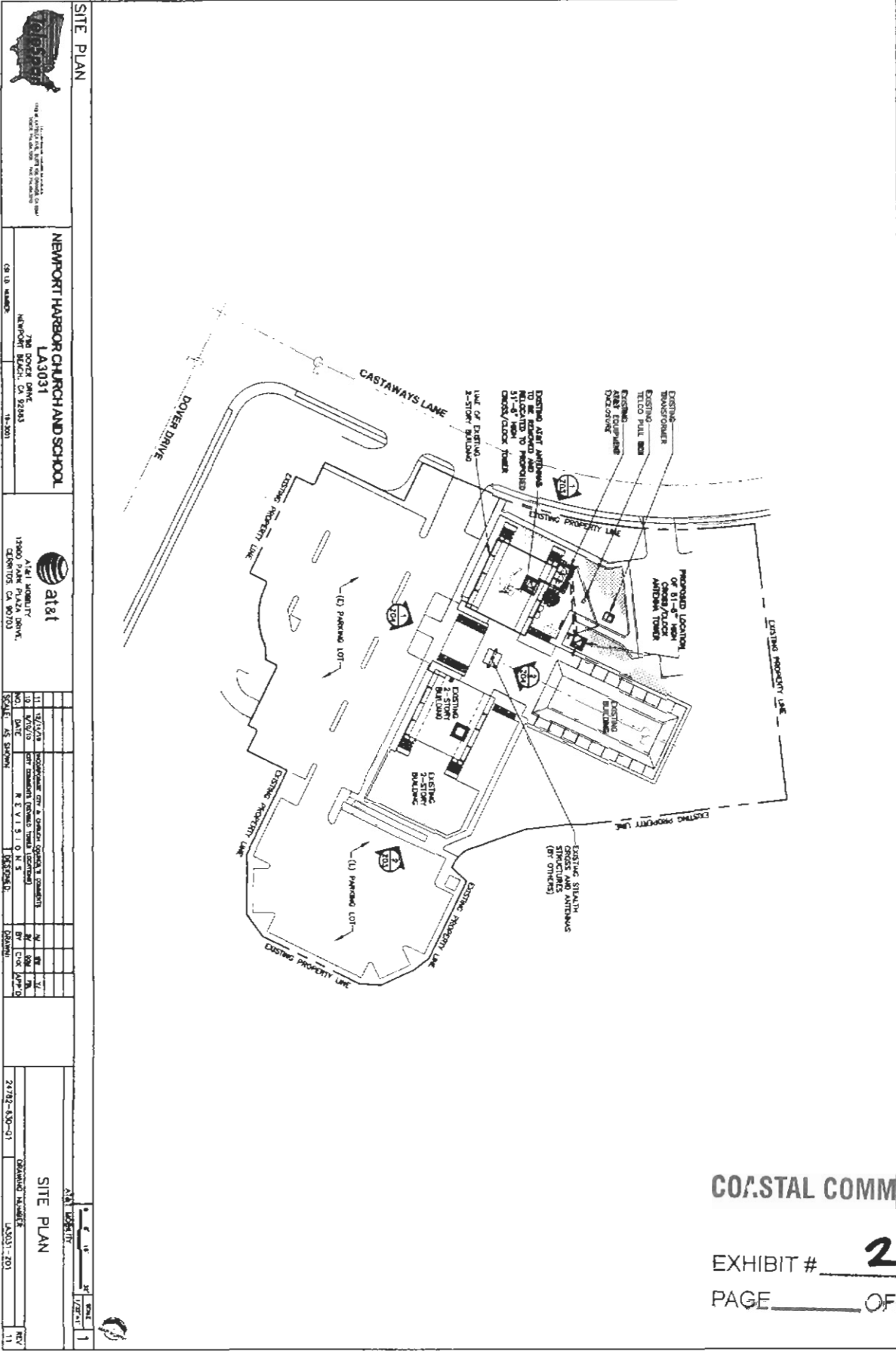
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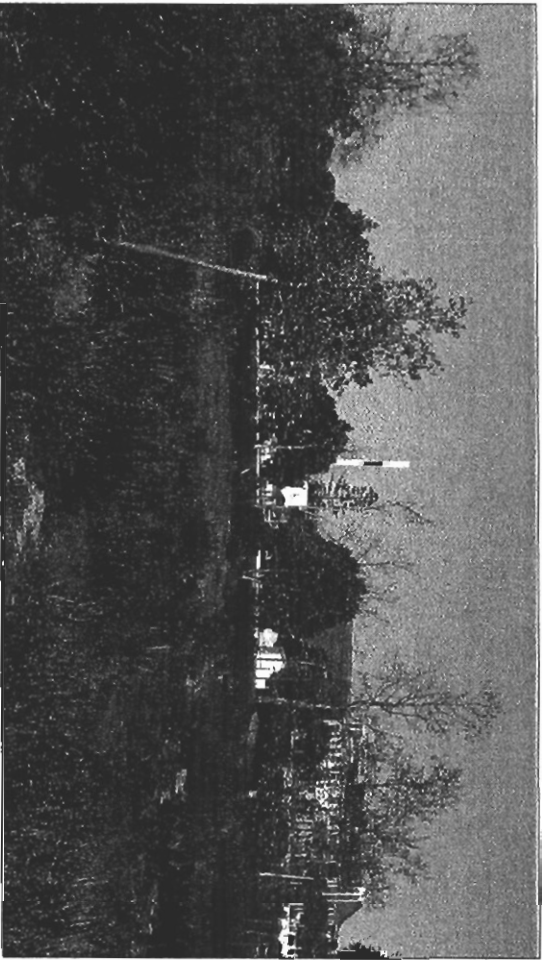
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EXHIBIT # **2**
 PAGE **2** OF **2**



Existing

View 4

Looking northeast from Castaways Park toward subject site.

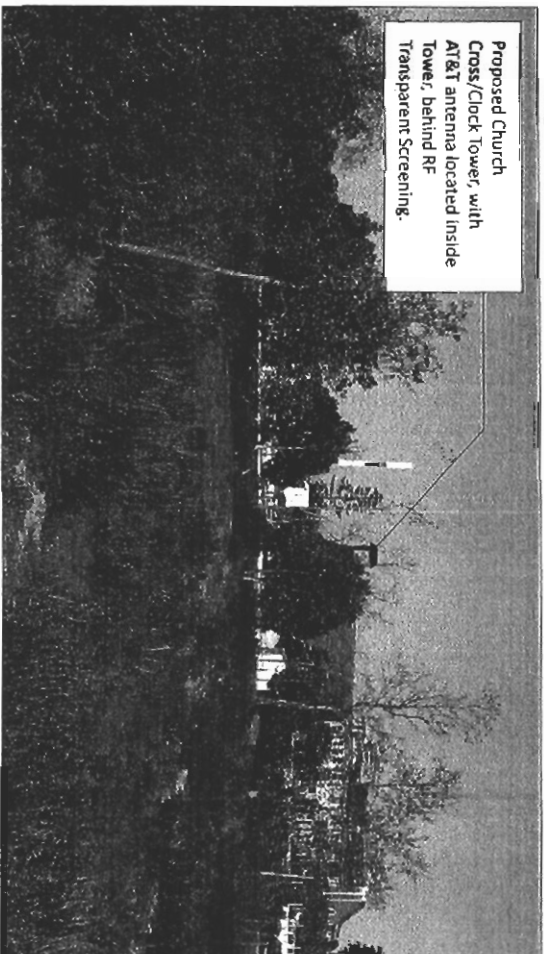


Photo-simulation

Proposed Church Cross/Clock Tower, with AT&T antenna located inside Tower, behind RF Transparent Screening.

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EXHIBIT #

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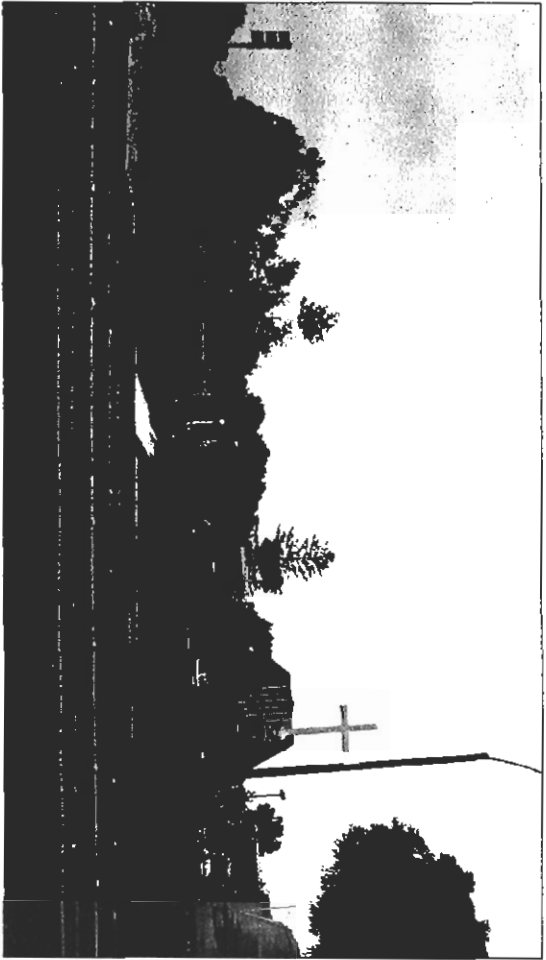
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Date:
Site id:

12/10/10
LA3031 Newport Harbor Church and School

Address:

798 Dover Dr.,
Newport Beach, CA 92660



Existing

View 3

Looking east from across Dover Dr. toward subject site.

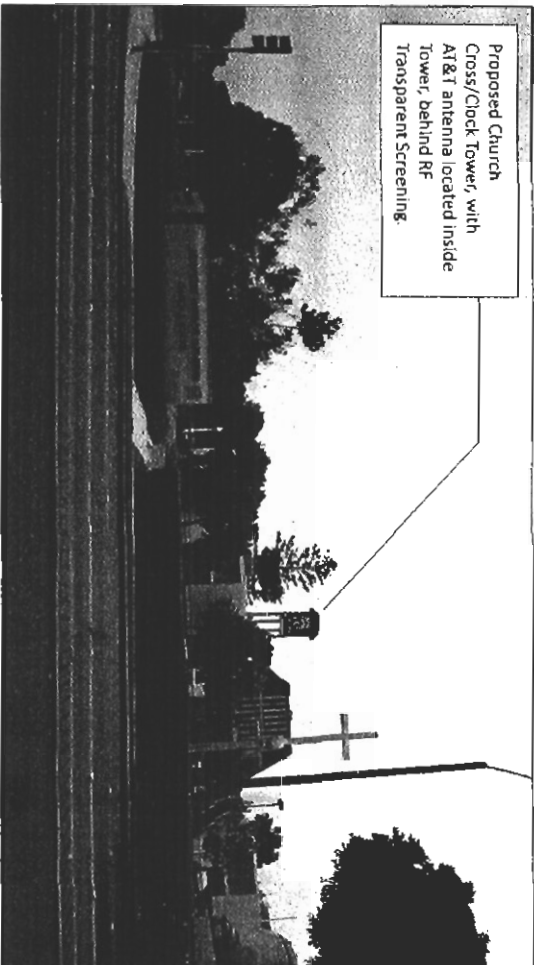


Photo-simulation

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