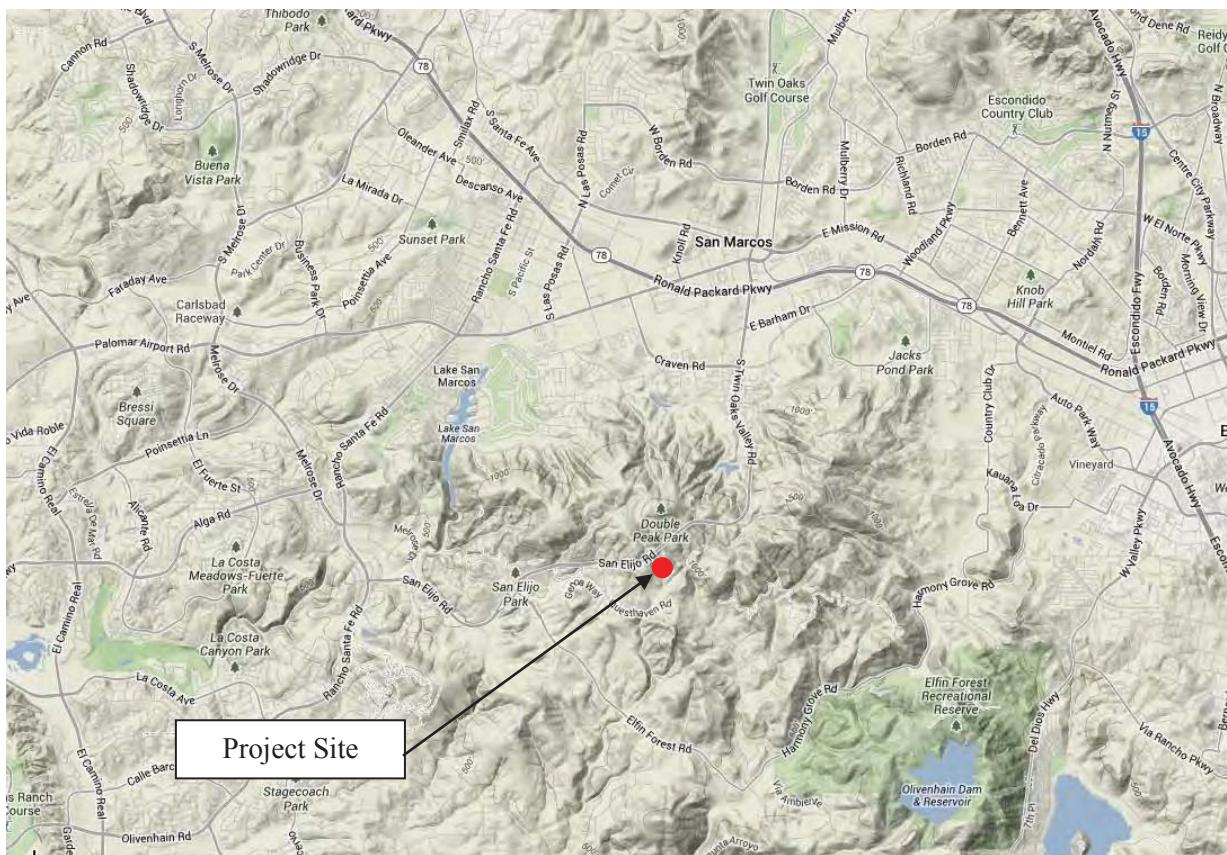




ATTACHMENT A

Vicinity Map



AGENDA ITEM NO. _____



ATTACHMENT B

Aerial Photo



- Location of existing faux tree wireless telecommunication facility
- Location of existing equipment enclosure



ATTACHMENT C

Requested Entitlements

Conditional Use Permit to allow the rehabilitation and continued operation of a faux tree wireless telecommunication facility at a residential property in the Agricultural (A-1) zone in the Questhaven/La Costa Meadows Neighborhood. In accordance with the California Environmental Quality Act (CEQA), the City of San Marcos does find the project Categorically Exempt (EX 15-030) pursuant to Section 15301 of the California Code of Regulations (CCR), in that that the project will rehabilitate/repair an existing facility.

AGENDA ITEM NO. _____



ATTACHMENT D

Site & Project Characteristics

<u>Property</u>	Existing <u>Land use</u>	<u>Zoning</u>	General Plan <u>Designation</u>
Subject	Single-Family Residence	A-1	AG/Res 0.125 – 1 du/ac
North	Open Space (vacant)	SPA	Open Space
South	Single-Family Residence	RR (SD County)	Semi-Rural Residential (SR-2)
East	Single-Family Residence	A-1	AG/Res 0.125 – 1 du/ac
West	Open Space (vacant)	SPA	Open Space

Flood Hazard Zone	<u> </u> yes	<u>X</u> no
Sewers	<u>n/a</u> yes	<u> </u> no
Septic	<u>n/a</u> yes	<u> </u> no
Water	<u>n/a</u> yes	<u> </u> no
Gen. Plan Conformance	<u>x*</u> yes	<u> </u> no
Land Use Compatibility	<u>x*</u> yes	<u> </u> no

Development Standards of the A-1 Zone:

<u>Setbacks</u>	<u>Required</u>	<u>Existing</u> <u>Equip. Enclosure</u>	<u>Existing</u> <u>Faux Tree Mono-pole</u>
Side (north)	15 ft.	~130 ft.	~300 ft.
Side (south)	15 ft.	~930 ft.	~775 ft.
Front (east)	35 ft.	~290 ft.	~250 ft.
Rear (west)	25 ft.	~76 ft.	~150 ft.
Height Maximum	50 ft.	11.5' ft.	30 ft.

* with approval of CUP.

AGENDA ITEM NO. _____



ATTACHMENT E

Telecommunications Facilities Ordinance

(Formerly SMMC Chapter 20.126, replaced by SMMC Chapter 20.465 on August 12, 2014)

AGENDA ITEM NO. _____

ORDINANCE NO. 2006-1261

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, AMENDING TITLE 20 BY ADDING CHAPTER 20.126, TELECOMMUNICATIONS FACILITIES, OF THE SAN MARCOS MUNICIPAL CODE

Case No. TA 05-58
CITY OF SAN MARCOS

WHEREAS, the City of San Marcos is proposing to amend Title 20 by adding Chapter 20.126 of the Municipal Code entitled "Telecommunications Facilities"; and

WHEREAS, the Developmental Services Department did study and recommend approval of said request; and

WHEREAS, on January 3, 2006 the Planning Commission held a duly noticed public hearing on the subject request and recommended approval to the City Council; and

WHEREAS, the required public hearing held on January 24, 2006 was duly advertised and held in the manner prescribed by law; and

WHEREAS, Negative Declaration (ND 05-735) is hereby approved pursuant to the California Environmental Quality Act (CEQA); and

WHEREAS, the City Council's decision is based upon the following findings and determinations:

- A. The proposed Text Amendment is required per the settlement terms of litigation regarding the regulation of telecommunications facilities.
- B. The proposed Text Amendment for a Telecommunications Ordinance will implement the goals and programs of the General Plan Land Use Policy, which states: "The City shall review and update, as directed by the City Council, the City Zoning regulations..."

NOW, THEREFORE, the City Council of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally and by the Charter of the City of San Marcos, specifically does ordain as follows:

SECTION 1. Chapter 20.126, Telecommunications Facilities, is hereby added to the San Marcos Municipal Code to read as follows:

CHAPTER 20.126
TELECOMMUNICATIONS FACILITIES

SECTIONS

- 20.126.010 Purpose**
- 20.126.020 Definitions**
- 20.126.030 Telecommunications Facilities by Right**
- 20.126.040 Procedures for Issuance of Permits for Telecommunications Facilities by Right**
- 20.126.050 Standards for Telecommunications Facilities by Right**
- 20.126.060 Conditional Use Permits**
- 20.126.070 Indemnification**
- 20.126.080 Non-Enforcement by the City**
- 20.126.090 Notices**
- 20.126.100 Filing**
- 20.126.110 Captions**
- 20.126.120 Severability**
- 20.126.130 Modification of this Chapter**
- 20.126.140 Penalty for Violation**

20.126.010 Purpose.

The purpose and intent of this Chapter is to provide a uniform and comprehensive set of procedures and standards for the development, siting and installation of Telecommunications Facilities. The regulations contained herein are designed: (i) to allow the City to effectively manage its Public Rights-of-Way, while at the same time providing for the managed development and installation of communications infrastructure in the City; and (ii) to promote and protect the public health, safety and welfare by undergrounding Telecommunications Facilities to the fullest extent possible, and reducing, if not eliminating, the impacts of Telecommunications Facilities upon City residents and the traveling public.

20.126.020 Definitions.

For the purpose of this Chapter, the following words, terms, phrases and their deviations shall have the meanings given herein. When not inconsistent with the context, words used in their present tense include the future tense, and words in singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(a) ***Applicant*** means a Telecommunications Carrier who is applying for a City-issued permit for the location and installation of Telecommunications Facilities within the City. Applicant shall also mean the owner of a Telecommunications Facility that has received such a permit from the City.

(b) **City Facilities** means City-owned streetlights, traffic lights and telemetry poles located in the Public Rights-of-Way.

(c) **City Property** means and includes all real property owned by the City including, but not limited to, public parks, fire stations and City office buildings, but excluding Public Rights-of-Way.

(d) **FCC** means the Federal Communications Commission or its designated representative.

(e) **Institutional Uses** means private schools, non-profit corporations, hospitals, churches and property of public agencies other than the City.

(f) **Person** means any corporation, partnership, limited liability company, proprietorship, individual or organization authorized to do business in the State of California, or any natural person.

(g) **Public Rights-of-Way** means and includes (i) any highway, street, alley or other public right-of-way and (ii) any easement owned by the City and acquired, established, dedicated or devoted for public road and utility purposes, now and hereafter owned by the City, to the extent of the City's right, title, interest or authority to grant a license to occupy such public rights-of-way and easements. For the purposes of this Ordinance, City trails shall not be considered a component part of the public right-of-way.

(h) **PUC** means the California Public Utilities Commission or its designated representative.

(i) **SDG&E** means San Diego Gas & Electric, a California public utility, and its successors and assigns.

(j) **Stealth Facility** means any Telecommunications Facility that is designed to blend into the surrounding environment and is visually unobtrusive. Examples of Stealth Facilities may include, but are not limited to, architecturally-screened, roof-mounted antennas or façade-mounted antennas painted and treated as architectural elements to blend with the existing building. All screening materials for Stealth Facilities shall match in color, size, proportion, style and quality with the exterior design and architectural character of the structure and the surrounding visual environment, depending on the visibility, zoning and character of the environment where the facility is to be located.

Examples of acceptable Stealth Facilities include, but are not limited to:

a. Antennas that are mounted behind screens designed to replicate natural features such as rocks and shrubbery and mounted in hillside areas or other natural areas where this design would blend with the existing topography and landscape (VWD owned land, in City parks, etc.). This could be a monorock or monoshrub.

b. Antennas located within the cylinder of a flagpole or other cylinder vertical structure.

c. Antennas located inside a freestanding structure that has been built for the sole purpose of supporting the Telecommunications Facility, with all antennas and accessory equipment located within the structure. Examples include clock towers, signs, windmills, or other types of vertical structures that are architecturally compatible with the surrounding land uses.

d. Monopalms and monotrees.

(k) **Telecommunications** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. In the event that the definition of "telecommunications" as found in the federal Telecommunications Act of 1996 is amended from time to time, the foregoing definition of "Telecommunications" shall be deemed so amended as well.

(l) **Telecommunications Carrier** means any owner, by way of fee ownership, lease or management agreement, of any Telecommunications System or Telecommunications Facilities or any provider of Telecommunications Services. A Person shall be deemed a Telecommunications Carrier even if it does not directly provide Telecommunications Services, if it rents or leases a Telecommunications System and/or Telecommunications Facilities to another Person who provides Telecommunications Services.

(m) **Telecommunications Facilities** means any and all equipment located, in whole or in part, in, above or below Public Rights-of-Way and other public or private property used by a Telecommunications Carrier in its Telecommunications System including, but not limited to, conduits, cables, wires, ducts, pedestals, antennae, electronics, drops and switching equipment.

(n) **Telecommunications Facilities by Right** means Telecommunications Facilities that may be developed, sited and installed within the City pursuant to an administrative use permit issued in accordance with the procedures outlined in this Chapter.

(o) **Telecommunications Service** means the offering of Telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(p) **Telecommunications System** means an operating system which is located, in whole or in part, on, in, above or below Public Rights-of-Way or other public or private property which is designed and utilized, in whole or in part, to provide Telecommunications Services.

20.126.030 Telecommunications Facilities by Right.

Telecommunications Facilities by Right are allowed in or on any of the following locations:

- (a) Commercial and Industrial Zones, provided that either the Telecommunications Facilities are located in the Public Rights-of-Way or the Telecommunications Facilities constitute Stealth Facilities that are located on or in buildings.
- (b) City Facilities
- (c) City Property
- (d) Institutional Uses
- (e) Public Rights-of-Way locations other than City Facilities and City Property, provided that all Telecommunications Facilities and associated facilities shall be located underground including, but not limited to, PBMD and telephone company connections, except as otherwise provided in Section 20.126.050(d). For the purposes of this Ordinance, City trails shall not be considered a component part of the public right-of-way.

Examples of acceptable installations in the Public Right-Of-Way include, but are not limited to, the following:

- 1) Antennas mounted on a streetlight standard or traffic signal standard. Typical examples include antennas that are mounted atop a utility pole within a street right-of-way or a streetlight or traffic signal standard by extending the height of the pole and using a cylindrical antenna unit that replicates the diameter and color of the pole or light standard. Such installations are acceptable but not required.
- 2) Small box antennas intended for wireless internet connections, mounted on the underside of a standard arm near the traffic signal or streetlight.
- 3) Antennas mounted to existing sports field (parks) light standards that are mounted where the antenna panels are visible and the placement of the antennas in relation to the light fixtures is appropriate. Antennas shall be painted to match the color of the light standard.
- 4) Antennas mounted to the exterior of an existing utility pole within the public right-of-way

(f) Sites of existing Telecommunications Facilities where substantial maintenance activity is necessary and/or where the Applicant is retrofitting or replacing existing Telecommunications Facilities with smaller and/or lower profile Telecommunications Facilities or appurtenances, or where all such retrofitting or

replacement is entirely below ground. Notwithstanding the foregoing, any existing Telecommunications Facility may be replaced as a matter of right one time only with a cabinet that is not more than 110% of the size of the cabinet that is being replaced.

20.126.040 Procedures for Issuance of Permits for Telecommunications Facilities by Right.

(a) Administrative Use Permit. The Planning Director shall issue an administrative use permit allowing the installation of a Telecommunications Facility by Right provided that all of the procedures set forth in this Section are complied with and all of the standards set forth in Section 20.126.050 are met.

(b) Site Development Review. Each administrative use permit for a Telecommunications Facility by Right shall include the equivalent of a Site Development Plan Review by City staff and payment of the City's standard fee for a Site Development Plan Review to ensure that the proposed Telecommunications Facility by Right meets the requirements and standards set forth in Section 20.126.050. Neither public notice nor a public hearing shall be required as part of the Site Development Plan Review for an administrative use permit for a Telecommunications Facility by Right.

(c) Telecommunications Facilities by Right in the Public Rights-of-Way. In those instances where the installation of a Telecommunications Facility by Right shall include work in the Public Rights-of-Way, the Applicant shall obtain, and pay all deposits and fees associated with obtaining, an encroachment permit from the City's Engineering Department, an excavation permit from the City's Public Works Department and a building permit from the City's Building Department.

20.126.050 Standards for Telecommunications Facilities by Right.

All Telecommunications Facilities by Right shall meet the following standards:

(a) Telecommunications Facilities not located in the Public Rights-of-Way shall be enclosed within new or existing structures and/or otherwise concealed or shielded from public view to the full extent technically feasible, and such Telecommunications Facilities shall be architecturally consistent with the new or existing structure and designed to meet the definition of "Stealth Facility" in Section 20.126.020(j). For those facilities mounted on buildings, the accessory equipment shall be inside the building, on the roof the building that the antennas are mounted on, or in a structure that is architecturally compatible with the main structure. For accessory wireless equipment, screening should be accomplished by locating the equipment within a fully enclosed building or in an underground vault (with the exceptions outlined in section 20.126.050(e)). For above ground installations that are not within a fully enclosed building, screening shall consist of walls, landscaping, or walls combined with landscaping to effectively screen the facility.

(b) Telecommunications Facilities located in the Public Rights-of-Way shall be located underground to the full extent allowed by applicable PUC regulations and to the full

extent technically feasible including, but not limited to, exhaust and intake valves that are not required to be above ground for technical reasons.

(c) In the event that a Telecommunications Facility is not concealed from public view and/or is not placed underground because it was not technically feasible to do so when the permit was issued for such Telecommunications Facility, an Applicant shall take such actions as are necessary to place such Telecommunications Facility underground when it becomes technically feasible to do so or to conceal such Telecommunications Facility from the public view by methods including, but not limited to, landscaping and other screening measures.

(d) Antennas located in the public right-of-way or on streetlights or traffic signals shall be limited to small equipment components that are compatible in scale and proportion to streetlights and traffic signals and the poles they are mounted on.

(e) To the extent that SDG&E does not allow the placement of facilities and/or equipment supporting Telecommunications Facilities attached to SDG&E utility poles to be located underground, such facilities and/or equipment may be located above ground. In the event that SDG&E changes its policies regarding undergrounding, all Applicants shall promptly take such actions as are necessary to place such facilities and equipment underground.

(f) All Telecommunications Facilities shall be painted to blend in with existing structures and surroundings.

(g) All Applicants shall perform maintenance including, but not limited to, graffiti removal, on all of their Telecommunications Facilities within 72 hours after receipt of notice from neighbors and/or the City of the need for such maintenance. Notwithstanding the foregoing, in the case of an emergency, an Applicant shall perform maintenance on a Telecommunications Facility immediately.

(h) In all cases where a Telecommunications Facility is to be located on property or a facility not owned by the City, an Applicant must have the written agreement of the property and/or facility owner that: (i) the Telecommunications Facility may be installed on the property and/or facility; (ii) the Applicant shall have access to the Telecommunications Facility at all times to perform necessary maintenance; and (iii) that the Applicant shall have access to the utilities necessary to operate and maintain the Telecommunications Facility. Except as provided in Section 20.126.050(d), utilities for all such Telecommunications Facilities shall be constructed underground and/or enclosed within Stealth Facilities.

(i) Under no circumstances shall the City be required to approve the installation of more than one (1) Telecommunications Facility on any streetlight, traffic light or utility pole unless the City deems it technically and aesthetically feasible, in its discretion, to do so.

(j) Under no circumstances shall the City be required to extend facilities upon which Telecommunications Facilities can be located including, but not limited to, street lights, to areas where they currently do not exist. Such facilities shall be extended into areas where they currently do not exist only if the Applicant pays the full cost of the construction, installation and ongoing maintenance and operation (including, but not limited to, electricity costs) of such extended facilities. In addition to the foregoing, to the extent that existing facilities upon which Telecommunications Facilities can be located must be modified or retrofitted to accommodate a Telecommunications Facility, such modification or retrofit shall be made at the Applicant's sole cost and expense.

(k) Prior to the issuance of a permit, the Applicant shall furnish proof to the City of the posting of a bond in favor of the City, with a corporate surety approved by the City and in the sum specified in the permit, that would cover the costs of removal of all of Applicant's Telecommunications Facilities within the City in the event that the Applicant no longer pays rent and/or energy costs and/or in the event that the Applicant no longer uses the Telecommunications Facility. Such bond shall cover the costs necessary to remove some vaults and to fill in other vaults, as determined by the City to be appropriate and consistent with the City's health and safety requirements.

(l) Prior to the issuance of a permit, the Applicant shall either furnish proof to the City of the posting of a bond in favor of the City, with a corporate surety approved by the City, or make a cash deposit with the City, either of which shall be in an amount that is specified in the permit as necessary to cover the costs of landscape maintenance of the Telecommunications Facility for the time periods set forth in Section 20.126.050(t), below. In the event that the Planning Director extends the landscaping monitoring and maintenance period as provided in Section 20.126.050(t), the bond or cash deposit required by this Section shall also be extended.

(m) With regard to any bond required to be posted under this Section, the corporate surety must be authorized to issue such bonds in the State of California, and the bond must be obtained and secured through an authorized agent in the County of San Diego. All such bonds must include provisions for increasing the bond amount by a reasonable amount over time and for increasing the bond amount in the event that the number of Telecommunications Facilities covered by an existing bond increases over time.

(n) An Applicant shall remove any Telecommunications Facility including, without limitation, foundations and appurtenant ground wires, from a site and the site shall be restored to its original pre-installation condition, within 180 days of cessation of operation or abandonment of the Telecommunications Facility. A facility shall not be deemed abandoned upon the expiration of this 180 day period if the applicant notifies the City in writing prior to the expiration of the 180 days of its intent to utilize the facility or to remove the same within one additional six month period. In no event shall abandonment of a facility be stayed or tolled under this Section for a period in excess of one year. On the removal of abandoned facilities, the applicant/operator shall notify the City within 180 days prior to terminating the operation of the facility, or as soon thereafter as is practicable.

Notification shall be in writing and shall include a reference to the Administrative Use Permit number and address location of the facility.

(o) The installation of any Telecommunications Facility shall not create or cause a violation of the Americans with Disabilities Act.

(p) Upon application, Telecommunications Carriers shall provide a theoretical assessment of compliance with all applicable FCC radio frequency ("RF") guidelines, incorporating all Maximum Permissible Exposure ("MPE") limits. Following installation and activation of the Facility, Telecommunications Carriers shall provide an actual assessment to verify compliance with all applicable FCC RF guidelines.

Upon receipt of sufficient public expression of concern that a Telecommunications Facility does not comply with existing RCC RF guidelines, the City may utilize the services of an independent radio frequency engineer to verify, at the Telecommunications Carrier's expense, the Facility's compliance with federal guidelines.

(q) No above ground Telecommunications Facility shall be located or placed in the path of public trails. Above ground Telecommunications Facilities to be located adjacent to a public trail must be located so that they do not impede public use of and access of the public trail.

(r) In the event a road improvement project requires a permitted Telecommunications Facility to be moved, such Telecommunications Facility shall be moved at the Applicant's sole cost and expense and shall be placed underground to the full extent technically feasible. Notwithstanding the foregoing, in the event that a road improvement project is initiated by a Person other than the City or the Applicant, such Person must move the Telecommunications Facility at its sole cost and expense. In addition to the foregoing, in the event that a service interruption would occur during the time period that a Telecommunications Facility is being moved, a temporary Telecommunications Facility may be installed for a period not to exceed 90 days, which may be extended for an additional 90 days upon application to the Director of Planning demonstrating the necessity for the extension to avoid disruption of service, provided that all of the requirements for installing a Telecommunications Facility by Right or a Telecommunications Facility requiring a Conditional Use Permit, as applicable, are met. Further extensions can be granted upon application to the Director of Planning and demonstration of the necessity therefor, particularly in cases of damage to Telecommunications Facilities resulting from natural disasters.

(s) An Applicant shall provide plans and specifications including, but not limited to, materials and color specifications and full construction details, for any proposed Telecommunications Facility to the level of detail required by the Planning Division. Upon construction of any Telecommunications Facility, the Applicant shall provide an as-built plan to the City. All plans required under this Chapter shall be prepared and signed by a California Licensed Engineer or Architect in accordance with the California Business and

Professions Code. Temporary Telecommunications Facilities shall be substantially similar to that depicted in Exhibit "A" to this Ordinance.

(t) An Applicant shall modify plans for a new Telecommunications Facility to the satisfaction of the City's Planning Director to incorporate noise attenuation measures in order to meet the requirements of the City's General Plan and the City's Noise Ordinance (Chapter 10.24 of the Municipal Code). Such noise attenuation measures may be supplemented or modified over time to accommodate technological advances in the field of noise suppression.

(u) An Applicant shall provide landscape and irrigation plans for the site of any proposed Telecommunications Facility, including a permanent source of irrigation for the site, if irrigation of the site is necessary and there is a feasible water source for the site that can be metered. All proposed landscaping shall be consistent with the surrounding area or community character and shall mitigate the visual impact of the Telecommunications Facility. Said landscape plans shall contain a mixture of shrubs, vines and ground cover. An Applicant shall monitor and maintain any such landscaping for a period of one (1) year following its installation, and the Applicant shall promptly replace any plantings that do not survive. The Planning Director shall have the ability, in his sole discretion, to extend the landscaping monitoring and maintenance period to two (2) years in the event that the landscaping is not healthy and vigorous at the end of the initial one (1) year period. In no event shall the City be responsible for the maintenance of of landscaping.

(v) An Applicant shall provide a traffic control plan for construction and/or maintenance of a Telecommunications Facility to the Engineering Department as part of any encroachment permit process and to the Public Works Department as part of any excavation permit process.

(w) An Applicant shall pay all applicable Public Facilities Fees as required by City Ordinance prior to the issuance of any permit.

(x) An Applicant shall pay all applicable development fees or permit fees as required by City Ordinance prior to the issuance of any permit.

(y) An Applicant shall submit separate petitions to annex into and establish with respect to the property where the Telecommunications Facility is to be located, the special taxes levied by the following Community Facilities Districts:

- (1) CFD 98-01, Police
- (2) CFD 2001-01, Fire and Paramedic
- (3) CFD 98-02, Lighting, Landscaping and Open Space

No permit will be issued without receipt of an executed petition for annexation, and consent and waiver executed by the property owner, for each of the above-referenced Community Facilities Districts and establishment of the special taxes. The Applicant/property owner shall comply with all rules, regulations, policies and practices

established by the City with respect to the Community Facilities Districts including, without limitation, requirements for notice and disclosure to future owners or residents. OR: The Applicant may, in lieu of annexing into the Community Facilities Districts for Police (CFD 98-01), Fire and Paramedic (CFD 2001-01) and Lighting, Landscaping and Open Space (CFD 98-02), pay the special taxes as a fee.

(z) The Telecommunications Facility shall comply with all applicable current and future FCC regulations. It shall be the responsibility of the Applicant to contact the City acknowledging any changes in the regulations that would affect the Telecommunications Facility.

(aa) The installation of the Telecommunications Facility shall comply with the provisions of the latest adopted Uniform Building and Electrical Codes as well as with the California Building Code, Part 2, Title 24, California Code of Regulations.

(bb) The Applicant shall comply with all City standards and requirements for excavation and grading, as established by City Ordinance, whether or not such work is performed in the Public Rights-of-Way.

(cc) If a Telecommunications Facility is to be placed outside the City Right-of-Way, the City may impose conditions to mitigate the environmental impacts of the facilities in a manner consistent with the California Environmental Quality Act.

20.126.060 Conditional Use Permits.

(a) When Required. A Conditional Use Permit shall be required for any Telecommunications Facility that:

(1) Would be placed in a location other than those specifically enumerated in Section 20.126.030; and/or

(2) Does not meet the standards for a Telecommunications Facility by Right as set forth in Section 20.126.050.

(b) Process. An application for a Conditional Use Permit under this Chapter shall be processed in accordance with the provisions of Chapter 20.104 of this Title.

(c) Mitigation of Impacts. If a Telecommunications Facility is to be placed outside the City Right-of-Way, the City may impose conditions to mitigate the environmental impacts of the facilities in a manner consistent with the California Environmental Quality Act.

20.126.070 Indemnification.

To the maximum extent permitted by applicable law, an Applicant shall at all times defend, indemnify, protect, save harmless and exempt the City, the City Council, its officers,

agents, servants, attorneys and employees, from any and all, penalty, damage or charges, excepting only punitive damages, arising out of claims, suits, demands, causes of action or award of damages whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which arise out of, or are caused by, the construction, erection, location, performance, operation, maintenance, repair, installation, replacement, removal or restoration of Telecommunications Facilities within the City based upon any act or omission of an Applicant, its agents or employees, contractors, subcontractors, independent contractors or representatives. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees and expert witness fees are included as those costs which shall be recovered by the City.

20.126.080 Non-Enforcement by the City. An Applicant shall not be relieved of its obligation to comply with any of the provisions of this Chapter, any permit issued hereunder or any applicable law or regulation, by reason of any failure of the City to force prompt compliance.

20.126.090 Notices. All notices and other communications with an Applicant shall be addressed to it at the address at which the Applicant conducts its business. All notices and other communications to the City shall be addressed to it at its published address for receipt of public communications.

20.126.100 Filing. When not otherwise prescribed herein, all matters required to be filed with the City shall be filed with the City Clerk or with such other official or agency as designated by the City.

20.126.110 Captions. The section and subsection numbers and captions throughout this Chapter are intended to facilitate reading and reference. Such numbers and captions shall not affect the meaning or interpretation of any part of this Chapter.

20.126.120 Severability. If any provision of this Chapter is determined to be void or invalid by any administrative or judicial tribunal, said provision shall be deemed severable and such invalidation shall not invalidate the entirety of this Chapter or any other provision thereof.

20.126.130 Modification of this Chapter. Nothing in this Chapter shall be deemed to prevent the City from negotiating terms in a permit that differ from the requirements of this Chapter to its satisfaction, provided that such modifications comply with applicable federal and state statutes.

20.126.140 Penalty for Violation. Any person who violates, or permits or causes any violation of, any provision of this Chapter shall be guilty of an infraction punishable in accordance with Section 1.12.010 of this Code. Each day, or portion of a day, during which a violation exists shall constitute a separate violation and may be punished separately.

20.126.150 Appeals

a. An appeal from the decision of the Director of Planning or other administrative official made in the administration or enforcement of this ordinance pertaining to installations that are not by right pursuant to Section 20.126.030 of this Ordinance may be taken as provided in this section.

b. The appeal may be taken by the Carrier or any person having an interest in the property that is the subject of the decision (hereinafter referred to as the subject property) or by the owner of or person having an interest in any property located within 500 feet of the exterior boundaries of the subject property.

c. The appeal may be taken by filing a written appeal with the City Manager or designee and paying any required fee within ten (10) days of the decision. The appeal shall set forth the grounds upon which the appellant asserts the decision was erroneous.

d. On the filing of such appeal, and the payment of any required fee, the City Manager or designee shall transfer to the Secretary of the Planning Commission, the subject papers and documents on file with the official from whose decision the appeal was taken, together with the report of such official.

e. The Planning Commission shall hold a hearing on said appeal after giving due notice thereof to the appellant and to the owners of the property within 500 feet of the exterior boundaries of the subject property in the manner prescribed in Section 20.104.080 of the San Marcos Municipal Code for giving notice of a hearing to consider a variance.

f. Any person dissatisfied with the decision of the Planning Commission may appeal therefrom to the City Council within ten (10) days after rendition of the decision of the Planning Commission. The appeal may be taken by filing of such appeal and payment of any required fee. The City Manager or designee shall forthwith transfer to the City Council the papers and documents applicable to such hearing and one file with the Planning Commission including the decision of said Commission. The written appeal shall set forth the grounds upon which the appellant asserts the decision of the Planning Commission was in error.

g. The City Council shall consider the appeal and shall either:

1. Affirm the decision of the Planning Commission, or
2. Hold a hearing de novo on the appeal.

Following any such hearing the City Council may either affirm the decision of the Planning Commission or render such decision as it considers appropriate.

h. Notice of hearing of an appeal before the City Council shall be given in the same manner as notice of hearing of such appeal before the Planning Commission.

i. An appeal stays all proceedings in further of the action appealed from and no building permit, license, or other permit that is the subject of such appeal shall be issued unless the officer from whose decision the appeal is taken has certified to the Planning Commission or City Council that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and/or property. In such latter case, proceedings shall not be stayed except by restraining order, which may be granted by the Planning Commission or City Council, or by a court having appropriate jurisdiction after notice to the officer from whose decision the appeal is taken and due cause shown.

j. The decision of the City Council in the case of any such appeal shall be final.

SECTION 2. This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance, or the title thereof, as a summary as required by state law.

INTRODUCED at a regular meeting of the City Council of the City of San Marcos held on the 14th day of February, 2006, and thereafter,

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos held on the 28th day of February, 2006, by the following roll call vote:

AYES: COUNCILMEMBERS: DESMOND, HARRIS, MARTIN, PRESTON, SMITH

NOES: COUNCILMEMBERS: NONE

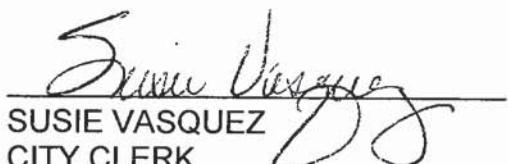
ABSENT: COUNCILMEMBERS: NONE

APPROVED:



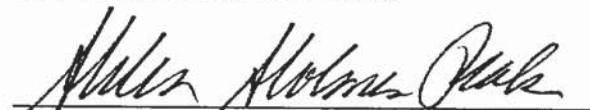
F.H. "CORKY" SMITH, MAYOR
CITY OF SAN MARCOS

ATTEST:



SUSIE VASQUEZ
CITY CLERK
CITY OF SAN MARCOS

APPROVED AS TO FORM



HELEN HOLMES PEAK
CITY ATTORNEY
CITY OF SAN MARCOS



ATTACHMENT F
Notice of Violation
(November 21, 2013)

AGENDA ITEM NO. _____

City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069
(760) 744-1050



CASE NO. CE 2013-1245

Issuing Department:

Code Compliance
 Building
 Fire
 Animal Control
 Other Planning

NOTICE OF VIOLATION

The City of San Marcos is committed to maintaining a high quality of life and productive business environment for its residents and business establishments. In keeping with this goal, City staff recently conducted an inspection of the property identified below and confirmed the existence of certain violation(s) of the San Marcos Municipal Code (SMMC) which must be corrected as instructed later in this Notice. Should you have any questions concerning this matter, please contact the undersigned.

Si le gustaría obtener esta información en Español por favor llame al siguiente numero (760) 744-1050, extension 3111.

IMPORTANT

This is a **Warning** Notice. Failure to correct the violation(s) noted by the date given below may result in the issuance of a citation carrying the following penalties:

1st Offense - \$100
3rd Offense - \$500

2nd Offense - \$200
4th & Subsequent Offense(s) - \$1,000
Violation of Multiple Code Sections – Penalty Varies

These civil fines are assessed per violation, per occurrence, and are cumulative. Payment does not excuse correction of the violations noted, nor does it bar further corrective action by the City, should circumstances warrant.

Date Notice Issued: 11/21/2013	Date Violation Observed: 10/30/2013	Time of Violation: A.M./P.M. 3:00	Day of Week: Wednesday	Origination Code:
Location of Violation (Address): 2080 Golden Eagle Trail			Assessor's Parcel Number: 4679-040-01	
Issued to: Name: Dohm Last: Jon First: Jon Middle: _____ Phone No.: _____				
Mailing Address: 510 Castillo Street, #302		Street/PO Box Santa Barbara, CA 93101	City/State Santa Barbara, CA 93101	Zip Code 93101
SMMC Code Sections(s) Violated		Description of Violation (s) (Attach Additional Pages, As Necessary)		
<input checked="" type="checkbox"/> see attached letter for a description of violation				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/>				
<input type="checkbox"/> SMMC 3.08.040. Business License Required		<input type="checkbox"/> SMMC 12.20.040. Parking to Advertise, Perform Maintenance		
<input type="checkbox"/> SMMC 6.24.140. Animal Noise - Disturbing the Peace		<input type="checkbox"/> SMMC 12.20.150. Parking or Standing of Commercial Vehicles		
<input type="checkbox"/> SMMC 8.64.010. Weeds and Dry/Dead Vegetation a Public Nuisance		<input type="checkbox"/> SMMC 12.20.160. Parking of RVs in Residential Districts		
<input type="checkbox"/> SMMC 8.64.020. Waste Matter a Public Nuisance		<input type="checkbox"/> SMMC 12.32.160. Inoperative Vehicles on Private Property		
<input type="checkbox"/> SMMC 8.68.220. Dumping/Spilling Refuse on Public or Private Property		<input type="checkbox"/> SMMC 20.36.080. Illegal Garage Conversion		
<input type="checkbox"/> SMMC 8.72.020. Accumulation of Junk		<input type="checkbox"/> SMMC 20.120. Illegal Signs (See Reverse)		
<input type="checkbox"/> SMMC 106.1. Construction or Addition Without a Building Permit				

(FULL TEXT OF THESE CODE SECTIONS IS ON REVERSE)

CORRECTIONS REQUIRED (Attach Additional Pages, As Necessary)	BY (Date/Time)
Please find further direction on required corrective actions in the attached letter	

ISSUING ENFORCEMENT OFFICER:

Print Name: **B. REYNOLDS** Telephone: (760) 744-1050 Ext. **3203**
Signature: **B. Reynolds** Date: **11-21-13**

RECIPIENT'S SIGNATURE:

Date:

(Note: Signing this notice acknowledges receipt only, and is not an admission of guilt.)

Notice Served: In Person

Posted on Property

By Certified Mail

Other **email**

SEE REVERSE FOR ADDITIONAL INFORMATION



November 21, 2013

Jon Dohm
Crown Castle
510 Castillo Street, Suite 302
Santa Barbara, CA 93101

Re: Notice of Violation (NOV) CE2013-1245 and Stop Work Order
Conditional Use Permit (CUP) 06-708 – T-Mobile Wireless Telecommunication Facility; and
Building Permit No. B12-01191
2080 Golden Eagle Trail, San Marcos, CA 92078
APN: 679-040-01

Dear Mr. Dohm,

This letter is to confirm previous notification that Conditional Use Permit (CUP) 06-708 has expired. Pursuant to the provisions of San Marcos Municipal Code (SMMC) §§ 20.100.040, 20.215.040 and 20.520.040, the owner/operator of the T-Mobile (Crown Castle) wireless telecommunication facility is required to obtain a new Conditional Use Permit (CUP).

Because Conditional Use Permit (CUP) 06-708 has expired, the Building Permit issued for the replacement of the antennas (B12-01191) has been suspended in conformance with SMMC § 17.02.010 and California Building Code (CBC) § 105. All work at the site (other than maintenance activities required to ensure the safety of the facility) shall cease immediately until the facility has obtained a valid Conditional Use Permit and the Building Division has issued a new Building Permit.

In addition to the expired Conditional Use Permit, an inspection of the facility conducted by City staff on October 30, 2013, found that the facility is also out of compliance with the terms and conditions of Conditional Use Permit 06-708 (Resolution No. PC 08-4003) and certain provisions of the SMMC. More specifically, the antennas were not painted with natural colors, located outside of the canopy of the faux tree and the antenna socks were significantly damaged to the point they no longer concealed the antennas. In addition, the landscaping planted by the applicant around the facility is not providing a sufficient level of screening as was approved per the photo simulation and some plants (i.e. shrubs on the north side of the equipment enclosure) are no longer present at the site. Lastly, the overall quality of the monopine has significantly degraded and no longer meets the City's standards for maintenance (i.e. the colors of the faux needles have faded, a significant amount of needles were observed on the ground and several branches were damaged and/or are altogether missing from the monopine).

Although the City would normally require development and submittal of a remediation plan to address these violations and a schedule of work for the City to review and consider, the City will not require it in this instance because Conditional Use Permit 06-708 has expired and remediation of the site will not occur unless and until a new Conditional Use Permit is approved. Rather, all elements relating to remediation of existing conditions and deficiencies should be addressed through the Conditional Use Permit application materials.



If a new Conditional Use Permit is not approved, then pursuant to SMMC §§ 1.12.090, 1.14.030, 20.550.020 and §§ 526-527 of the California Code of Civil Procedure, the initiation of the appropriate proceedings pursuant to SMMC § 20.545.060 shall commence for the complete removal of the facilities located on the site. Please feel free to contact me with any questions you may have regarding this letter at (760) 744-1050 extension 3223, or sdelsolar@san-marcos.net.

Sincerely,

Sean del Solar
Assistant Planner

Enclosures: Site Photos
Photo Simulations Approved for CUP 06-708
Conditional Use Permit (CUP) 06-708 (Resolution No. PC 08-4003)
Notice of Violation CE2013-1245 (Dated 11/21/2013)

CC: Barry Reynolds, Building Official
Paul Williams, Code Enforcement Officer
Sean Scully, 27 Orchard, Lake Forrest, CA 92630
Kirt Babcock, T-Mobile, 10180 Telesis Court, #333, San Diego, CA 92021
Jeff and Elaine Brandon, 2080 Golden Eagle Trail, San Marcos, CA 92078
Tim Hinion, 1264 Basswood Ave., Carlsbad, CA 92008 (B12-01191 Applicant)
Walter Estaver, 553 W. Allen Ave., San Dimas, CA 91773 (B12-01191 Contractor)
File MF 0153



October 30, 2013

Photo 1



In this photo, the unpainted surfaces of the antennas can be seen, as well as the degraded quality of the antenna socks and discoloration of the faux pine needles.

Photo 2



In this photo, the antennas can be seen protruding from the faux tree canopy of the facility.



Site Photos (Con't)

October 30, 2013

Photo 3



In this photo, the lack of landscape screening can be seen from Orion Way, west of the project site.

Photo 4



In this photo, pine needles can be seen beneath the monopine. Significant quantities of faux pine needles were observed beneath the monopine.



Site Photos (Con't)

October 30, 2013

Photo 5



In this photo, a damaged and/or broken branch can be seen on the ground beneath the monopine with discolored faux pine needles.

Photo 6

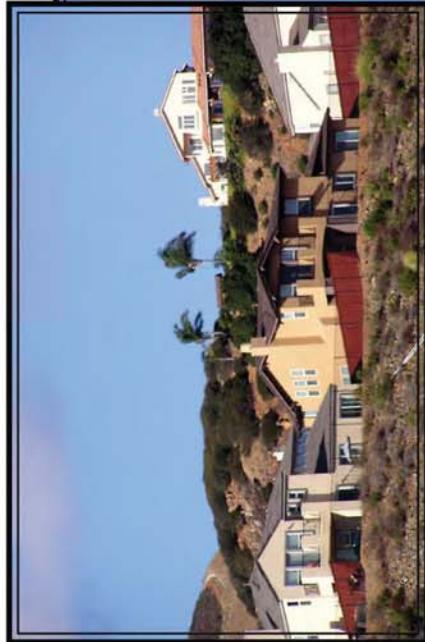


In this photo, one of the required three plants (two missing) can be seen on the north side of the equipment enclosure.

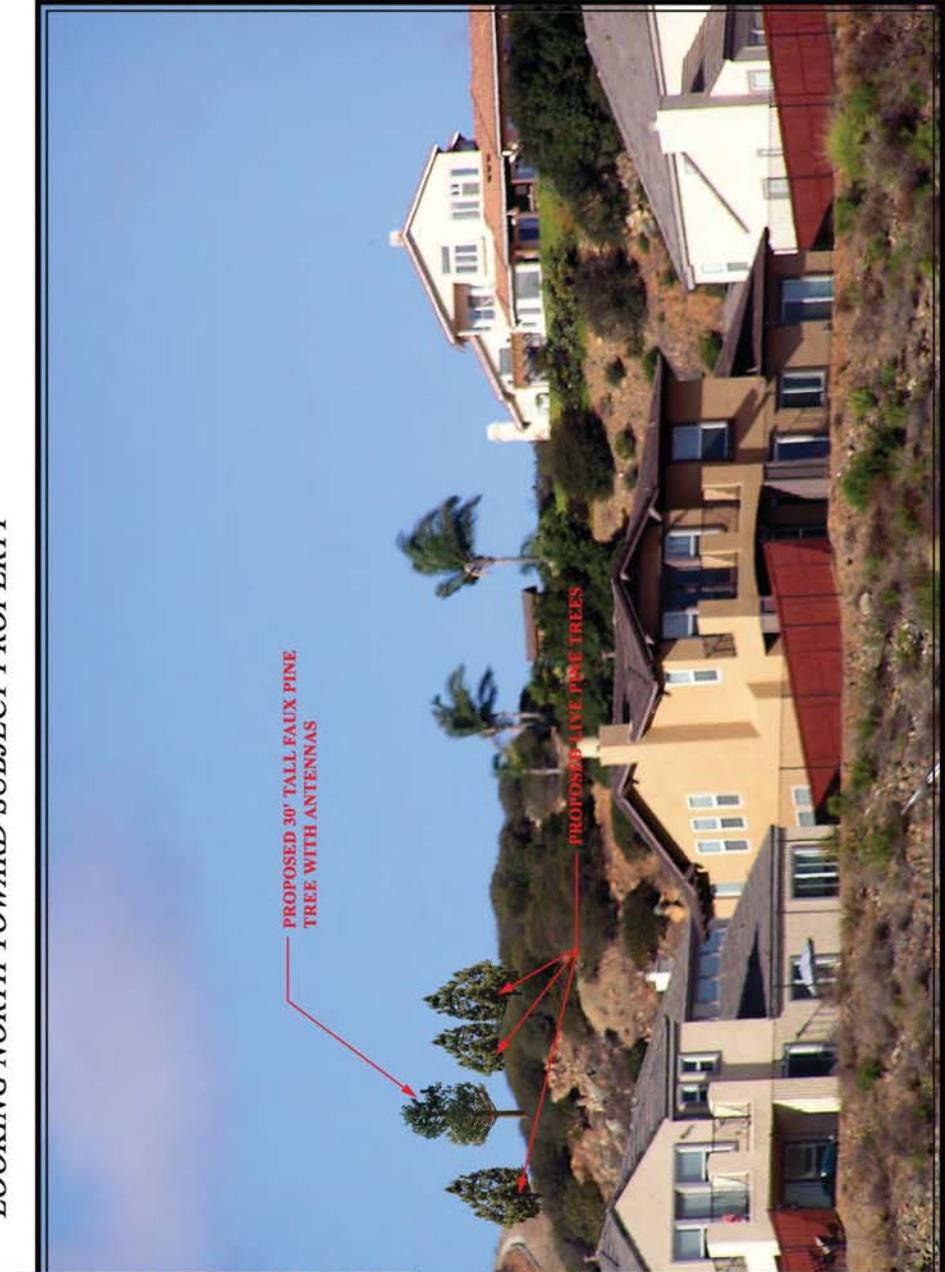
T Mobile
SD 06391 C

JEFFREY BRANDON
2080 GOLDEN EAGLE TRAIL
SAN MARCOS, CA 92078

LOOKING NORTH TOWARD SUBJECT PROPERTY



SITE PRIOR TO INSTALLATION



SITE AFTER INSTALLATION



VICINITY MAP

LAND USE CONSULTANTS
760-390-7727

T Mobile
SD 06391 C

JEFFREY BRANDON
2080 GOLDEN EAGLE TRAIL
SAN MARCOS, CA 92078

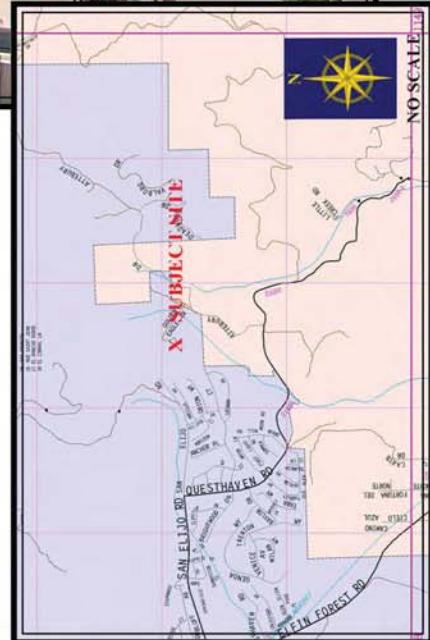
LOOKING NORTHEAST TOWARD SUBJECT PROPERTY



SITE AFTER INSTALLATION



SITE PRIOR TO INSTALLATION



VICINITY MAP

LAND USE CONSULTANTS
760-390-7727

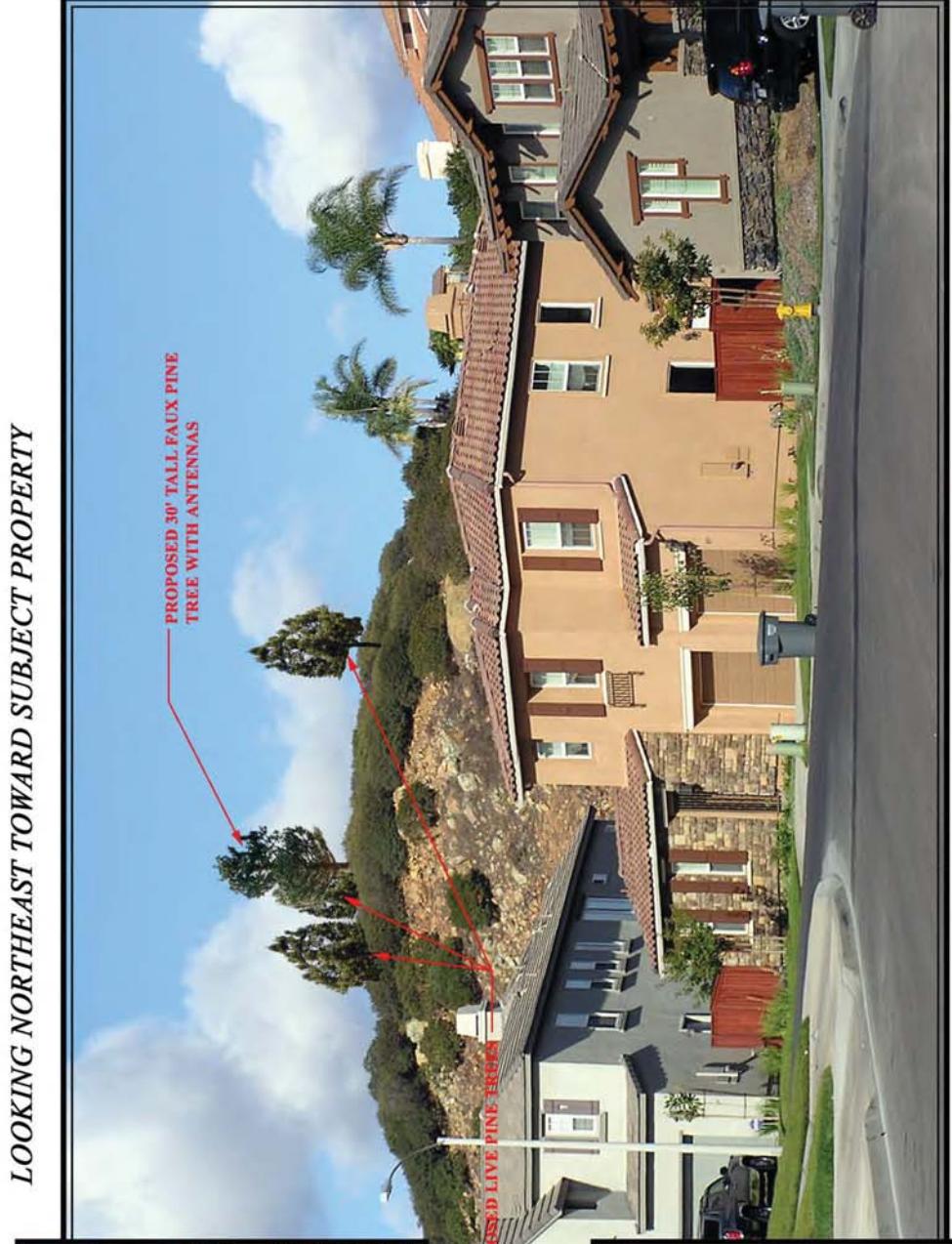
T Mobile
SD 06391 C

JEFFREY BRANDON
2080 GOLDEN EAGLE TRAIL
SAN MARCOS, CA 92078

LOOKING NORTHEAST TOWARD SUBJECT PROPERTY



SITE PRIOR TO INSTALLATION



SITE AFTER INSTALLATION



VICINITY MAP

LAND USE CONSULTANTS
760-390-7727

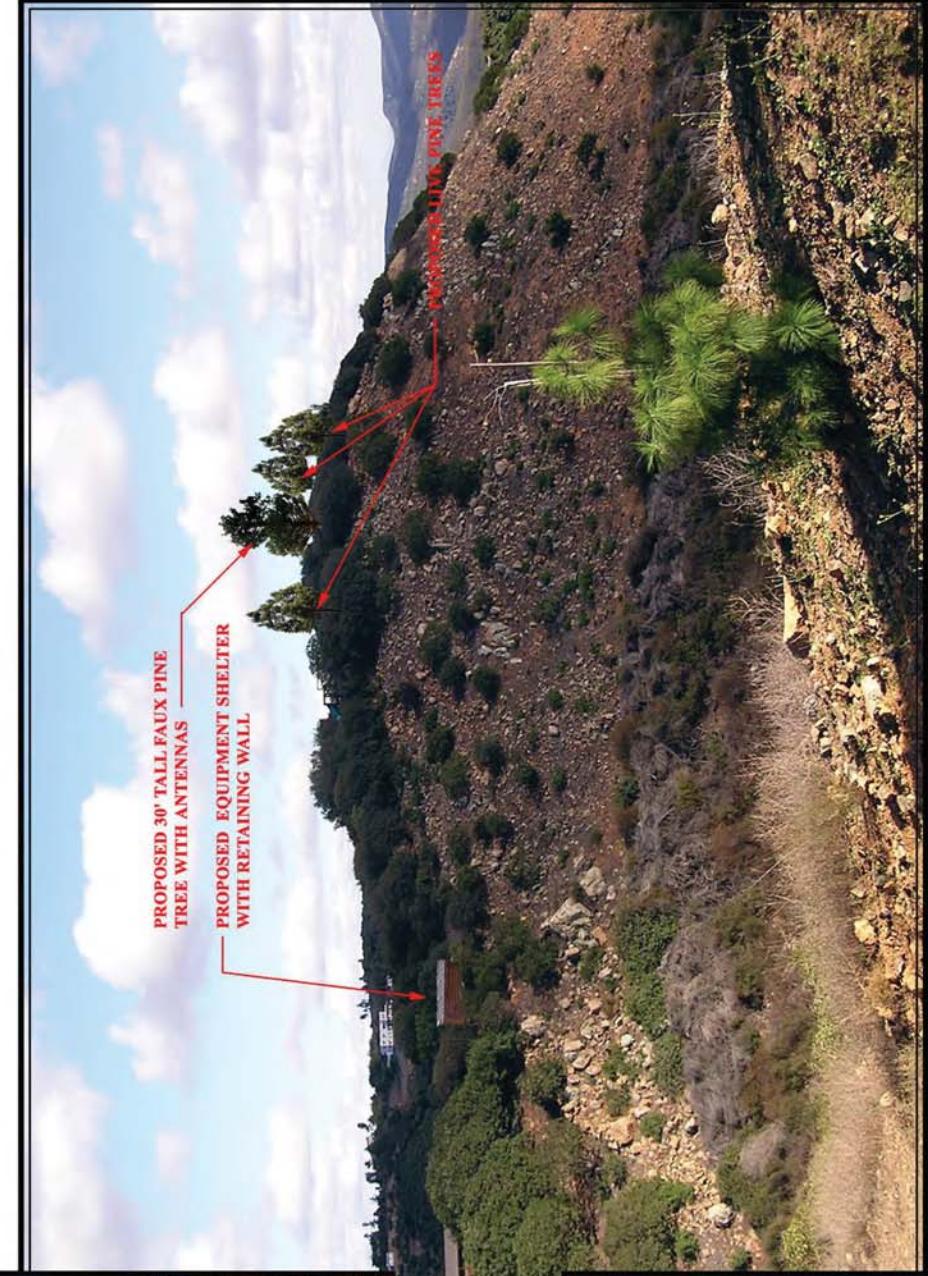
T Mobile
SD 06391 C

JEFFREY BRANDON
2080 GOLDEN EAGLE TRAIL
SAN MARCOS, CA 92078

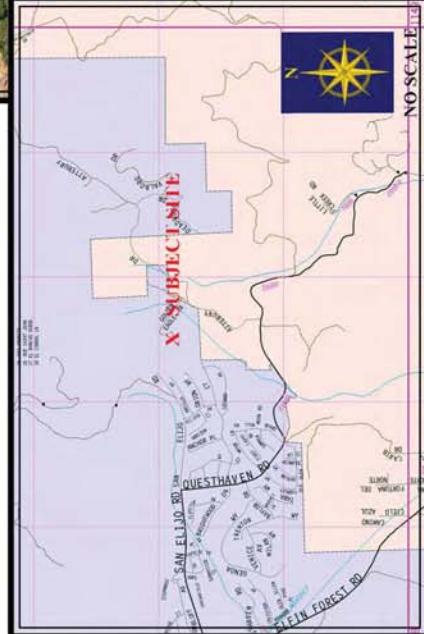
LOOKING SOUTHEAST TOWARD SUBJECT PROPERTY



SITE PRIOR TO INSTALLATION



SITE AFTER INSTALLATION



VICINITY MAP

LAND USE CONSULTANTS
760-390-7727

RESOLUTION PC 08-4003

A RESOLUTION OF THE CITY OF SAN MARCOS PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE INSTALLATION AND OPERATION OF AN UNMANNED DIGITAL COMMUNICATIONS ANTENNA FACILITY ON A MONO-PINE TREE AT AN EXISTING SINGLE-FAMILY RESIDENCE IN THE AGRICULTURAL (A-1) ZONE IN THE QUESTHAVEN/LA COSTA COMMUNITY PLAN

Case No. CUP 06-708
T-Mobile USA, Inc

WHEREAS, on December 4, 2006 an application was received from T-Mobile USA, Inc. requesting a Major Conditional Use Permit to allow the installation and operation of an unmanned digital communications antenna facility, including ground-mounted equipment inside a new 250 square-foot enclosure and a thirty (30) foot high mono-tree with twelve (12) panel antennas (designed to resemble a pine tree) at an existing single-family residence located at 2080 Golden Eagle Trail in the Agricultural (A-1) Zone in the Questhaven/La Costa Community Plan, more particularly described as

A portion of the northeast quarter of the southeast quarter, all in Section 27, Township 12 South, Range 3 West, San Bernadino Meridian, in the County of San Diego, the State of California, According to United States Government Survey approved September 19, 1889

Assessor's Parcel Number 679-040-01

WHEREAS, the Development Services Department did study said request and does recommend approval of requested use; and

WHEREAS, the required public hearing held on March 3, 2008 was duly advertised and held in the manner prescribed by law; and

WHEREAS, the Planning Commission did consider a Mitigated Negative Declaration (ND 08-766) for said request pursuant to the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission's decision is based on the following findings and determinations:

1. The granting of the Conditional Use Permit, with staff conditions, is consistent with the policies and intent of the adopted Questhaven/La Costa Community Plan, in that the installation of digital communications facilities provides a needed communication service.

2. The granting of the Conditional Use Permit, with staff conditions, will not be detrimental to the public health, safety, or welfare, or the surrounding land uses in the area in that the proposed wireless antenna facility will be located at a developed site and that operational standards for the facility have been conditioned to comply with FCC standards and California PUC requirements. In addition, the proposed mono-tree is designed to resemble adjacent trees that will be planted and the panel antennas will be concealed by the faux branches and leaves of the mono-tree, and the ground mounted equipment will be screened from view by an equipment enclosure.

NOW, THEREFORE, the Planning Commission resolves as follows:

- A The foregoing recitals are true and correct
- B The Conditional Use Permit is approved per the submitted site plan, floor plan, elevations, and visual simulation, except as modified herein, and shall not be expanded unless a modification to this permit is approved
- C The Conditional Use Permit is approved subject to compliance with the following conditions:
 1. The site plans and elevations shall be modified as follows:
 - a. On the Title Sheet, T-1, the zoning classification shall indicate "Agricultural" A-1
 - b. On Sheet A-4, the proposed cable connections to the monotree shall be concealed by undergrounding.
 - c. On Sheet A-5, the proposed 4'0" chain link access gate shall be replaced with a solid metal door painted to match the color of the building.
 - d. Provide a detail for the proposed T-Mobile split vault (identified on Sheet A-1 1).
 2. The landscape plans shall be modified as follows:
 - a. Incorporate hand planting, re-vegetation, and irrigation, in the areas impacted by the proposed utility trench.
 - b. Incorporate replacement planting as required to mitigate for biological impacts
 3. The grading plan (GR-1) shall be modified as follows

- a The note indicating "New 'Sprint' drainage swell to run full length along backside of retaining wall" shall read "New 'T-Mobile' drainage swell to run full length along backside of retaining wall."
- b The note indicating "New 'Sprint' drywell (Typ Of 2)" shall be replaced with "New 'T-Mobile' drywell (Typ. Of 2)"
- c. Note 9 shall reflect "Cut slopes shall not exceed a grade of 2:1 instead of 1 ½ horizontal to 1 vertical "

4. The proposed equipment enclosure shall match in color, detail, texture, and building material, the existing barn. All ground-mounted equipment (i.e.: equipment cabinets, telco panel, electrical panel/meter, etc.) shall be located within the equipment enclosure and completely screened from view
5. Three mature pine trees, comparable in size (height, and spread) as approved by the Planning Division, shall be planted adjacent to the proposed monotree. Said tree locations shall be shown on the landscape plan with the final approval by the Planning Division in the field, prior to planting of said trees. The trees shall be provided with irrigation.
6. The trunk of the mono-tree shall be rounded. The twelve (12) panel antennas, mounted on top of the mono-tree, shall be painted dark green and completely screened from view by the faux branches and leaves of the mono-tree
7. The mono-tree shall have a maximum height of thirty (30) feet (top of highest branch/leaf). If any of the existing plant material adjacent to the proposed mono-tree shall perish or be destroyed, then the applicant/operator shall replace them with a tree of the same type and size.
8. All conduit, cables, etc for connecting the ground-mounted equipment to the mono-tree and a utility source (i.e.: power, telephone, etc.) shall be concealed from view by undergrounding. The area of any trench work (i.e. driveway, landscaping, etc) shall be restored to original condition by the applicant, including the use of hand planting with irrigation to reestablish vegetation on the slopes
9. In the event that a Telecommunications Facility is not concealed from public view and/or is not placed underground because it was not technically feasible to do so when the permit was issued for such Telecommunications Facility, the applicant shall take such actions as are necessary to place such Telecommunications Facility underground when it becomes technically feasible to do so or to conceal such Telecommunications Facility from the public view by methods including, but not limited to, landscaping and other screening measures.
10. Within 30 days of the approval of the Conditional Use Permit (CUP 06-708), the site plan shall be submitted as an original mylar along with a mylar of this resolution as the title page. This title page shall include the statement "I(we), _____, the

owner(s) or the owner's representative, have read, understand and agree to the conditions of Resolution PC 08-4003." Immediately following this statement shall appear a signature block for the owner or the owner's representative which shall be signed. Signature blocks for the Project Planner and the Project Engineer shall also appear on this title page. The mylars shall be approved by the City prior to any building permit submittal.

11. Prior to full time operation (i.e.: installation of the equipment cabinets within a 250 square-foot enclosure, and 12 panel antennas mounted on top of a 30-foot high mono-tree), the applicant shall insure (in writing) to the Planning Division Director that the facility is in compliance with all applicable FCC regulations. It will be the responsibility of the operator to contact the City acknowledging any changes in the regulations that would affect this project prior to any modification
12. Within six months of final inspection approval for the installation, the applicant/operator of the facility shall submit to the Planning Division a project implementation report which provides field measurements of radio frequency densities of all antennas installed on the subject site, and all existing ambient levels of radio frequency emissions. This report shall include a written summary comparing results of the field measurements with FCC standards (i.e.: stating emissions as a percentage of FCC limits). Additionally, this report shall be conducted at a time that the facility is operating at its designed maximum power output level. If panel antennas are installed in phases, said report shall be updated when additional antennas are installed (not to exceed maximum of 12 panel antennas). The applicant shall submit to the Planning Division a copy of applicable FCC documentation (i.e.: license, permit, etc) authorizing the operation of the facility
13. The report shall be subject to review and approval by the Planning Division Director. Upon receipt of sufficient public expression of concern that a Telecommunications Facility does not comply with existing FCC radio frequency guidelines, the City may utilize the services of an independent radio frequency engineer to verify, at the Telecommunications Carrier's expense, the Facility's compliance with federal guidelines. If the City finds that the facility is not in compliance with FCC standards, the City shall require the facility to be modified to comply with FCC standards, or the facility shall be entirely removed from the site.
14. The Telecommunications Facility shall comply with all applicable current and future FCC regulations. It shall be responsibility of the applicant to contact the City acknowledging any changes in the regulations that would affect the Telecommunications Facility.
15. If the Federal Communications Commission adopts new standards regarding this use, the applicant shall repeat the monitoring and report cycle specified in conditions C12, C13, and C14.

16. A building permit is required for the installation of the ground mounted equipment, equipment enclosure and mono-tree. The installation shall comply with the provisions of the latest adopted Uniform Building Code and other model construction codes.
17. Prior to issuance of any building permits, the following conditions shall be complied with:
 - a. The applicant shall sign a statement on the approved building plans attesting to the fact that he/she has read Section 17.32.045 of the City's Grading Ordinance pertaining to permit exemptions, and that he/she believes to the best of his/her knowledge that he/she is exempt from the City's permit requirements based on one or more criteria set forth in said ordinance. Otherwise, a detailed grading plan shall be submitted to the City's Engineering Division for review and approval, and all related requirements must be met prior to issuance of a grading permit.
 - b. The Engineering Division shall approve the proposed design of the drywells located on both sides of the equipment enclosure.
 - c. The proposed GPS antenna(s) shall be appropriately located to minimize a signal view of any nearby residences.
 - d. Prior to project implementation and upon further project review by the City Planning Division, the applicant shall provide habitat-based mitigation at a set ratio for impacts to Southern Mixed Chaparral habitat that contains wart-stemmed ceanothus. Habitat based mitigation shall be mitigated for at a ratio of 1:1 (i.e. 1.0 acre of mitigation credits for every 1.0 acre of habitat impacted). Habitat-based mitigation shall be executed according to policy set forth by the City of San Marcos. Onsite mitigation is preferred however offsite purchase of mitigation credits from an approved mitigation bank may also be approved. Proof of execution of mitigation will be required by the City of San Marcos during project review.
 - e. As an avoidance and minimization measure, prior to construction, a qualified biologist should conduct a survey to identify and physically mark all wart-stemmed ceanothus individuals on and in the immediate vicinity of the proposed impact area. The biologist should confirm the locations of all wart-stemmed ceanothus individuals on and in the immediate vicinity of the proposed impact area with construction personnel for the proposed project. Construction activities should be executed in a method to avoid all wart-stemmed ceanothus specimens to the maximum extent feasible. A monitoring biologist should be present during construction to ensure that direct removal and mortality of wart-stemmed ceanothus individuals is reduced, if feasible, and that no additional individuals outside the proposed impact area are impacted. Construction methods should be low-impact and

non-intrusive, and should be conducted by hand-trench or low-impact drilling equipment where feasible.

- f. To avoid any direct or indirect impacts to nesting birds, removal of any suitable nesting habitat, including any brushing, clearing, and/or grading activities of habitat that may support active nests shall be restricted to periods outside of the breeding season, which is defined as occurring between February 14 and August 31. If the removal of habitat that may support active nests must occur during the breeding season, the applicant shall retain a City-approved biologist to conduct a pre-construction survey for the presence of nesting birds on and within an approximately 500-foot buffer surrounding the construction area. The pre-construction survey must be conducted within 10 calendar days prior to initiating any construction activities, or a set number of days prior according to the City. If nesting birds are detected by the City-approved biologist, a bio-monitor should be present on-site during construction to minimize construction impacts and ensure that no nest is removed or disturbed until all young have fledged
- g. The applicant/developer shall be responsible for mitigating impacts created by changes in drainage runoff course, concentration, or quantity to the satisfaction of the City Engineer for both on-site and off-site drainage. This may require the applicant/developer to provide all necessary easements and improvements to accommodate drainage and flood control structures extending beyond the boundaries of the project.
- h. Under separate permit, the applicant/developer shall submit landscape plans to the Planning Division for review and approval in compliance with the following:
 1. The applicant shall provide landscape and irrigation plans for the site of the proposed Telecommunications Facility, including a permanent source of irrigation for the site, if irrigation of the site is necessary and there is a feasible water source for the site that can be metered. All proposed landscaping shall be consistent with the surrounding area or community character and shall mitigate the visual impact of the Telecommunications Facility. Said landscaping plans shall contain a mixture of shrubs, vines, and ground cover. The applicant shall monitor and maintain any such landscaping for a period of one (1) year following its installation, and the applicant shall promptly replace any plantings that do not survive. The Planning Division Director shall have the ability, in his sole discretion, to extend the landscaping monitoring and maintenance period to two (2) years in the event that the landscaping is not healthy and vigorous at the end of the initial one (1) year period. In no event shall the City be responsible for the maintenance of landscaping.

2. Final landscape and irrigation plans shall be prepared by a licensed landscape architect.

3. This project is subject to the payment of a landscape permit and inspection fee. The landscape permit and inspection fee shall be four and one-half percent (4.5%) of the Landscape Architect's estimate for the completion of all landscaping shown on approved mylars. All submitted estimates shall be stamped and signed by the Landscape Architect, and estimate the cost of plant and irrigation materials only

4. The landscape plans shall include three natural pine trees, comparable in size and spread of the proposed monotree, as approved by the Planning Division Director. All planting required for mitigating the biological impacts shall be incorporated into the landscape plan.

5. The irrigation system shall include an automatic rain sensor switch, master valve, stainless steel enclosure for the backflow device, and stainless steel controller cabinet if within public view. The landscape plan shall list the quantities of each plant type, including a legend indicating what each symbol represents; and method of installation and irrigation.

6. The placement of plants shall be installed in accordance with the approved landscape plans. Prior to planting the three natural pine trees, the applicant shall contact the Planning Division to approve the trees and the placement of said trees. Upon completion of installation, all landscaping/irrigation shall be inspected and approved by the Planning Division and/or Landscape District Supervisor. The applicant/developer shall be responsible to contact the Planning Division for landscaping inspections.

i. Erosion control and/or sediment control details shall be submitted with/on the grading plans to the City's Engineering Division for review and approval. The details shall conform to City standards, codes and ordinances. The details shall include landscaping and temporary irrigation systems on exposed slopes to be approved by the City's Engineering and Planning Divisions.

j. All structures shall be designed to comply with the latest adopted Uniform Building Code, published by the International Conference of Building Officials (ICBO) and with the State of California Building Code, Part 2, Title 24, California Code of Regulations.

k. Plans and construction documents submitted for a building permit shall be signed and sealed by a California licensed design professional as required by the State Business and Professions Code

- 1 The City of San Marcos is located in Seismic Zone 4. All structures shall be designed to adequately transmit to the foundation the dynamic lateral forces developed in the building in accordance with the engineering requirements of the latest adopted California Building Code and the Uniform Building Code, Volume II, as adopted by the City of San Marcos.
- m. In lieu of annexing the site into the Community Facilities Districts, the applicant shall pay the special taxes as required: For CFD 98-01/CFD 2001-01 (Police/Fire & Paramedic), the in-lieu fee is \$1000.00, and for CFD 98-02 (Lighting & Landscaping), the in-lieu fee is \$1000.00. Said in-lieu fees shall be paid prior to issuance of a building permit.
- n. The project is subject to Public Facilities Fees as established by the City of San Marcos Public Facilities Financing Plan Ordinance. The amount of the public facilities fees shall be in accordance with the latest adopted ordinance and resolution. The fees shall be based on the approved land use and shall be paid prior to the issuance of any permit or land use entitlement as determined by the City
- o. The applicant shall pay school impact mitigation fees as required by law

18. During the construction phase, the following conditions shall be complied with

- a. The project shall implement a fugitive dust emissions control plan during construction. This plan shall include the watering of the site for dust control, isolating excavated soil onsite until it is hauled away.
- b. All construction operations authorized by building permits, including the delivery, setup and use of equipment shall be conducted on premises during the hours of 7:00 a.m. to 6:00 p.m. on Monday through Friday, and on Saturday between 8:00 a.m. and 5:00 p.m. No work shall be conducted on Sundays or Holidays observed by the City of San Marcos. Failure to comply will result in the issuance of STOP WORK NOTICES, REVOCATION OF PERMITS, and the issuance of citations as appropriate. Citations for hours of work violations require a mandatory court appearance in North County Superior Court
- c. Grading, excavation or other related earth moving operations, including warm-up and maintenance activities, shall be limited to the hours of 7:00 a.m. to 4:30 p.m., Monday through Friday. No work shall be allowed on Saturdays, Sundays and holidays.

19. This application shall be limited to the installation of

- a. Twelve (12) antenna panels mounted on top of a thirty (30) foot high mono-tree designed to resemble a natural pine tree.

- b. Ground mounted equipment (4 equipment cabinets, telco panel, electrical panel/meter, GPS antenna, meter & disconnect switch.), within a 250 square-foot equipment enclosure designed to match the existing stable, and located on the side yard; utility trenching, and redwood steps providing access from the monstree to the equipment enclosure.
- 20. No additional equipment or antennas are permitted other than what is identified in Condition "C19" A modification to this Conditional Use Permit (CUP 06-708) is required to add or modify the number or type of antennas or equipment as identified in Condition "C19".
- 21. Prior to reliance on this use, it may be deemed necessary by the Planning Division Director that additional screening is installed and the screening cost would be paid for by the communication companies
- 22. Prior to reliance on this use, the applicant shall submit a letter(s) by the landscape architect and biologist to the Planning Division certifying that the plant materials and irrigation system have been installed in accordance with the approved landscape plans.
- 23. The user shall submit noise readings of the wireless facility in operation to the City Planning Division to verify the facility compliance with City Noise standards.
- 24. The applicant shall remove the Telecommunications Facility including, without limitation, foundations and appurtenant ground wires, from the site and the site shall be restored to its original pre-installation condition, within 180 days of cessation of operation or abandonment of the Telecommunications Facility. The facility shall not be deemed abandoned upon the expiration of this 180 day period if the applicant notifies the City in writing prior to the expiration of the 180 days of its intent to utilize the facility or to remove the same within one additional six month period. In no event shall abandonment of a facility be stayed or tolled under this Section for a period in excess of one year. On the removal of abandoned facilities, the operator/applicant shall notify the City within 180 days prior to terminating the operation of the facility, or as soon thereafter as is practicable. Notification shall be in writing and shall include a reference to the Use Permit number and address location of the facility.
- 25. The three natural pine trees and landscaping approved for this project shall be maintained in a healthy, thriving manner. All trees and landscaping shall be maintained in a healthy, thriving manner. If any trees/landscaping shall die or become diseased, the trees/landscaping shall be replaced in numbers and quantity to provide the same landscaping and screening value, as determined by the Planning Division
- 26. The installation of communication equipment deemed a public utility shall comply with the rules and regulations enforced by the state of California Public Utilities Commission.

- 27 To the extent feasible and as permitted by law, developers and contractors are requested to first consider the use of San Marcos businesses for any supplies, materials, services, and equipment needed, and the hiring of local residents in order to stimulate the San Marcos economy to the greatest extent possible.
- 28 Any changes in the approved location will require submittal of a revised drawing with all necessary information to be reviewed and approved by the Planning Division Director
29. This Conditional Use Permit shall be reviewed by staff to determine whether it is having a detrimental effect on surrounding uses. Should it be determined that such is the case, a public hearing shall be scheduled before the Administrative Authority for possible modification or revocation. Failure to comply with any condition contained herein shall likewise constitute grounds for such a hearing
- 30 Any new construction, alteration, improvement, or modification to an existing building requires the issuance of a building permit and compliance with the minimum code requirements of the latest adopted uniform building code
- 31 This Conditional Use Permit shall become null and void if not acted upon within twelve (12) months of the adoption of this resolution.
32. This Conditional Use Permit shall expire on March 3, 2013. Any request for permit extension shall be applied for by the permittee no later than thirty (30) days prior to the expiration date.
- 33 To the extent permitted by law, the Applicant shall defend and hold the City of San Marcos ("City"), its agents and employees harmless from liability from: (i) any and all actions, claims, damages, injuries, challenges and/or costs of liabilities arising from the City's approval of any and all entitlements or permits arising from the project as defined in the conditions of approval, or issuance of grading or building permits; (ii) any damages, liability and/or claim of any kind for any injury to or death of any person, or damage or injury of any kind to property which may arise from or be related to the direct or indirect operations of the Applicant or its contractors, subcontractors, agents, employees or other persons acting on Applicant's behalf which relate to the project; and (iii) any and all damages, liability and/or claims of any kind arising from operation of the project. Applicant further agrees that such indemnification and hold harmless shall include all defense related fees and costs associated with the defense of City by counsel selected by the City. This indemnification shall not terminate upon expiration of the conditions of approval or completion of the project, but shall survive in perpetuity.

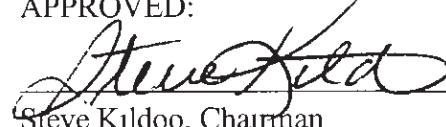
PASSED AND ADOPTED by the Planning Commission of the City of San Marcos, State of California, at a regular meeting thereof, this 3rd day of March, 2008, by the following roll call vote

AYES: COMMISSIONERS: COHEN, KILDOO, LUNDIN, NELSON,
SCHAIBLE, VOJTECKY, WEDGE

NOES: COMMISSIONERS NONE

ABSENT COMMISSIONERS NONE

APPROVED:



Steve Kildoo, Chairman

SAN MARCOS CITY PLANNING COMMISSION

ATTEST:



Lisa Kiss, Planning Secretary
SAN MARCOS CITY PLANNING COMMISSION