



ATTACHMENT K
CUP12-0004 CC Resolution

RESOLUTION 2013-7854

A RESOLUTION OF THE CITY OF SAN MARCOS CITY COUNCIL DENYING AN APPEAL OF A CONDITIONAL USE PERMIT TO ALLOW THE INSTALLATION AND OPERATION OF A WIRELESS TELECOMMUNICATION FACILITY AS A FAUX TREE AT RESIDENTIAL PROPERTY IN THE AGRICULTURAL (A-1) ZONE

Project No. P12-0023
CUP 12-004 / ND 13-006 / AA 13-001
AT&T Mobility, LLC.

WHEREAS, on December 18, 2012 an application was received from AT&T Mobility, LLC. requesting a Conditional Use Permit to allow the installation and operation of a wireless telecommunication facility, comprised of a 35 foot tall faux tree monopole and associated ground-mounted equipment inside a new 240 square-foot equipment building designed to emulate an agricultural building at a 10.21 acre property located in the Agricultural (A-1) zone with a General Plan Land Use Designation of Agricultural, more particularly described as:

The West 417.42 Feet of the South 1/3 of the Southeast Quarter of the Northwest Quarter, and the West 417.42 Feet of the North 626.13 Feet of the Northeast Quarter of the Southeast Quarter, All in Section 27, Township 12 South, Range 3 West, San Bernardino Meridian, In the County Of San Diego, State of California, According to The 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 recommended approval of requested use; and

WHEREAS, the Planning Commission did consider a Mitigated Negative Declaration (ND 13-006) for said request pursuant to the California Environmental Quality Act (CEQA); and

WHEREAS, the Planning Commission approved the request for a CUP and adopted the Mitigated Negative Declaration (ND 13-006) by a 5-2 vote, on September 3, 2013, subject to conditions based on the findings contained in Planning Commission Resolution PC 13-4359; and

WHEREAS, an appeal was filed by Mr. Elliot Herman, on September 11, 2013, in opposition to the decision of the Planning Commission; and

WHEREAS, a provisional appeal was filed by Mr. and Mrs. John Signorino, on September 12, 2013, in opposition to the decision of the Planning Commission; and

WHEREAS, the City Council held an appeal hearing on October 22, 2013 which was legally noticed and duly advertised and held in the manner prescribed by law; and

NOW, THEREFORE, the City Council resolves as follows:

- A. The foregoing recitals are true and correct.
- B. The City Council finds that, in accordance with CEQA, on the basis of the entirety of the record before it (including the Initial Study and any comments received), there is no substantial evidence that the project as conditioned will have a significant effect on the environment. The City Council further finds that the Mitigated Negative Declaration reflects the City's independent judgment and analysis, and approves the same.
- C. The City Council finds that the Conditional Use Permit, as conditioned, will not be detrimental to the public health or welfare, or to the surrounding land uses, in that the proposed wireless antenna facility will be located at a developed site and the City's expert has independently determined that the design and technical conditions of the proposed wireless antenna facility as conditioned will in all respects comply with the FCC regulations for impacts on the quality of the human environment (47 C.F.R. § 1.1303 *et seq.*); environmental impacts have been mitigated to a level of below significant with the incorporation of the Conditions of Approval contained in Resolution PC 13-4359; and any potential noise impacts will be attenuated by the approved equipment enclosure. In addition, visual impacts of the proposed project have been minimized because the monopole is designed to resemble a pine tree that will blend in with the existing simulated pine and adjacent natural trees; additional natural trees will be planted to further screen the monopole; the panel antennas will be concealed by pine needle antenna covers, the faux branches and leaves of the mono-pine; and the ground mounted equipment will be screened from view by an equipment enclosure designed to emulate an agricultural building.
- D. The City Council finds that the Conditional Use Permit, with staff conditions, is consistent with the policies and intent of the adopted General Plan, and the provisions of the City's Municipal Code.
- E. The appeal of the Planning Commission's approval of the Conditional Use Permit pursuant to Resolution PC 13-4359 is hereby denied.
- F. The terms and provisions of Resolution PC 13-4359 and the Conditional Use Permit are hereby revised as reflected on the attached red-lined version, which is incorporated herein by this reference as though set forth in full.

PASSED, APPROVED AND ADOPTED by the City Council of the City of San Marcos, this 22nd day of October 2013, by the following roll call vote:

AYES: COUNCILMEMBERS: JABARA, JENKINS, JONES, DESMOND

NOES: COUNCILMEMBERS: ORLANDO

ABSENT: COUNCILMEMBERS: NONE



James M. Desmond, Mayor
City of San Marcos

ATTEST:



Phil Scolliek, City Clerk
City of San Marcos

RESOLUTION PC 13-4359

A RESOLUTION OF THE CITY OF SAN MARCOS PLANNING COMMISSION APPROVING A CONDITIONAL USE PERMIT TO ALLOW THE INSTALLATION AND OPERATION OF A WIRELESS TELECOMMUNICATION FACILITY AS A FAUX TREE AT RESIDENTIAL PROPERTY IN THE AGRICULTURAL (A-1) ZONE

[AS REVISED BY CITY COUNCIL ACTION ON OCTOBER 22, 2013 FOLLOWING APPEAL]

Project No. P12-0023
CUP 12-004 / ND 13-006
AT&T Mobility, LLC.

WHEREAS, on December 18, 2012 an application was received from AT&T Mobility, LLC. requesting a Conditional Use Permit to allow the installation and operation of a wireless telecommunication facility, comprised of a 35 foot tall faux tree monopole and associated ground-mounted equipment inside a new 240 square-foot equipment building designed to emulate an agricultural building at a 10.21 acre property located in the Agricultural (A-1) zone with a General Plan Land Use Designation of Agricultural, more particularly described as:

The West 417.42 Feet of the South 1/3 of the Southeast Quarter of the Northwest Quarter, and the West 417.42 Feet of the North 626.13 Feet of the Northeast Quarter of the Southeast Quarter, All in Section 27, Township 12 South, Range 3 West, San Bernardino Meridian, In the County Of San Diego, State of California, According to The 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 August 19, 2013 was duly advertised and held in the manner prescribed by law and was continued to September 3, 2013; and

WHEREAS, the Planning Commission did consider a Mitigated Negative Declaration (ND 13-006) 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 General Plan, in that the installation of a collocation of a wireless telecommunication facility provides a needed communication service within the City of San Marcos.
2. The granting of the Conditional Use Permit, as conditioned, 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; and potential noise impacts will be attenuated by an equipment enclosure. In addition, visual impacts of the proposal have been minimized because the monopole is designed to resemble a pine tree and will blend in with the existing mono-pine (operated by T-Mobile) and adjacent natural trees; the panel antennas will be concealed by the faux branches and leaves of the mono-pine; and the ground mounted equipment will be screened from view by an equipment enclosure designed to emulate an agricultural building.

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 for a 35'-0" tall faux tree monopole with twelve (12) panel antennas servicing one telecommunication provider (AT&T) and a 240 square foot (12'-0" x 20'-0") equipment enclosure except as modified herein, and shall not be expanded unless a modification to this permit is approved.
- C. Within thirty (30) days of approval, the project plans shall be revised as follows:
 1. The site plan shall be submitted as a digital file on a CD including this resolution on 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 13-4359." 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 digital copy shall be approved by the City prior to any building permit submittal.
 2. Sheet T-1 shall be revised to remove "City of San Diego" and replace with "City of San Marcos."
 3. The proposed side mounted "coax cable shroud" shall be removed. All wiring exiting the monopole shall do so underground through conduit imbedded in the foundation of the monopole.

4. The "mechanical condenser pad" and associated appurtenances (i.e. retaining wall, stone veneer foundation wall, etc.) shall be relocated from the northwest side of the equipment enclosure to the southeast side of the equipment enclosure. The new location of the mechanical pad shall, to the extent feasible screen the mechanical equipment. Final design and location of the mechanical pad and retaining walls shall be subject to the approval of the Planning Division Director.
5. The GPS antennas shall be relocated to the south eastern side of the building and painted to match the equipment enclosure.
6. The proposed equipment building and mechanical pad walls shall incorporate agricultural themed architectural details and appear identical to the existing T-Mobile equipment enclosure incorporating matching colors and fire resistant finishes/roofing materials.
7. All ground-mounted equipment for the wireless antenna facility shall be located within the equipment building, except for the two (2) condenser units and two (2) GPS antennas which shall be completely screened from view by the stone veneer clad mechanical equipment pad walls.
8. The design of the faux tree shall emulate a pine tree with a canopy that exhibits a wide base and gently tapered sides that matches, to the extent feasible, the existing T-Mobile faux tree monopole.
9. All tower mounted equipment shall be completely concealed within the canopy of the faux tree. Any penetrations of faux tree canopy by tower mounted equipment shall be prohibited.
10. The panel antennas shall be permanently covered with faux leaves (leaf-covered socks), and completely screened from view by the faux branches and leaves of the faux tree.
11. The panel antennas, brackets, radio equipment, mounting hardware, and cables shall be painted a blend of green and brown to match the faux tree foliage.
12. 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 shall be restored to original condition by the applicant.
13. All retaining walls shall incorporate the use of stone veneer.

14. Notes shall be added to the plans that indicate a separate landscape plan is required to be approved by the Planning Commission prior to the issuance of the Building Permit. The site plan shall identify the proposed locations of the six (6) Pinus Eldarica ("Afghan Pines") trees (twenty four (24) inch box sized with 8' 0" trunk height and 4' 0" spread). Plans shall also indicate that a separate Landscape Permit is required for the approval and installation. The required trees shall be distributed throughout the hillside and to the extent possible, should not be clustered on the ridge of the hill. The final placement and species of these trees is subject to the approval of the Planning Division Director.
 15. A fuel management zone shall be required 30' from the perimeter of the equipment enclosure. The applicant shall provide for a fuel-management easement on adjacent properties if needed. All easements shall be reviewed and approved by the City Engineer prior to the recordation of said easement. Documentation shall be provided by the developer/applicant showing adjacent property owners have agreed to grant fuel modification easements.
 16. Any required fuel management zone easements shall be reviewed and approved for recordation by the City Engineer, Fire Marshal and City Attorney. Conformed copies of recorded fuel management easements shall be provided to the City Engineer and Planning Division.
- D. Prior to the commencement of any construction activities onsite (i.e. utility trenching, grading, clearing, grubbing, etc.), the applicant shall:
1. Provide habitat-based mitigation at a set ratio for impacts to Southern Mixed Chaparral habitat that contains at least 25 individual wart-stemmed ceanothus plants. Habitat based mitigation shall be mitigated for at a ratio of 1:1. 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.
 2. 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 1 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.

3. Document the current condition of private roadways (i.e. Golden Eagle Trail and the segment of Attebury Drive between Golden Eagle Trail and Questhaven Road) being used for construction traffic. Documentation shall include either a video or photographic record of the roadway condition. A copy of the documentation shall be provided to the Engineering and Planning Divisions. The extent of the inspection shall be determined by the City's Planning Division Director. Applicant shall be responsible for reimbursement for City staff time spent reviewing materials submitted.
- E. Prior to the reliance on this Conditional Use Permit, the applicant shall obtain Building Permits from the Building Division.
- F. Prior to the issuance of Building Permits, the following shall be complied with:
1. Plans submitted for plan check to the Building Division for the issuance of Building Permits shall include the following:
 - a. All provisions of Conditions "C" and "D" shall be addressed to the satisfaction of the Planning Division Director.
 - b. A sheet containing a copy of each page of this Conditional Use Permit shall be attached.
 - c. The applicant shall also include a sheet in the plans submitted for Building Permits that contains manufacturer specifications for the faux tree. These specifications shall contain, at a minimum: the specific model of the "monopine," a branch diagram and close up photos of the faux bark, and leaf materials. The branch diagram shall contain an accurate branch count and sufficient information on branch spacing to demonstrate compliance with the following requirements:
 - i. At a minimum, three (3) faux branches per foot shall be required to create a realistic and natural faux tree. All branches shall incorporate faux leaves, natural colors and three (3) dimensional textures.

- ii. Horizontally mounted faux branches and leaves shall extend a minimum of eighteen (18) inches beyond the face of the panel antennas.
 - iii. All panel antennas shall be covered with leaf-covered socks.
2. Applicant shall perform all grading work compliant with SMMC 17.32. Issuance of a grading permit shall be required for grading activities performed outside of the exemptions listed in SMMC 17.32.045.
3. The applicant shall sign a statement on the approved site plan and submit building plans attesting he has read Section 17.32.045 SMMC ("Grading Ordinance") pertaining to permit exemptions, and that he believes to the best of his knowledge that he 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.
4. No engineering permit shall be construed as providing exemption to applicable or adopted standards. Any changes or modifications to City adopted, obligatory, or conditioned standards shall not occur without the explicit permission of the City Engineer or his designee. Where these standards are in conflict Developer/Applicant shall bear the responsibility of garnering clarification from the City Engineer. Unless a standard variance has been issued, no variance from City Standards is authorized by virtue of approval of this project or issuance of an engineering permit.
5. Applicant shall be responsible for bearing the costs of all grading activities, on-site and off-site improvements, labor, design, mitigation, or other costs associated with the projects' planning, engineering, construction or architecture for the project.
6. This project has been designated a Standard project based on the submitted threat assessment form. This project shall be responsible for full compliance with the latest adopted Standard Urban Stormwater Management Plan (SUSMP), latest adopted stormwater quality permit, and conditions the conditions contained herein for the project's designation. Changes to the project that affect the project's SUSMP designation shall require approval of the City Engineer and may be subject to further conditions at the time of Building Permit issuance.
7. This project has been designated a Risk Level R2 project based on the submitted risk assessment. This project shall be responsible for full compliance with the latest adopted Construction General Permit State of the Water Resources

Control Board and conditions contained herein for your projects risk level. Changes to the scope of the project that affect the risk assessment shall require the approval of the City Engineer and may be subject to further conditions at the time of Building Permit issuance.

8. A separate permit for landscaping shall be required. Landscape plans submitted for a permit shall be approved by the Planning Commission, as a consent calendar item. At a minimum, the proposed landscaping shall comply with the following requirements:
 - a. Landscape plan shall identify the proposed locations of all landscape screening materials including, but not limited to, species, number of specimens, trunk height and spread.
 - b. The plan shall, to the extent reasonably feasible, screen the equipment from view of adjacent residences, and shall designate the tallest specimens and largest box size feasible with respect to landscape materials.
 - c. The applicant shall have the landscape plan reviewed by a licensed arborist and licensed landscape architect at its sole cost and expense.
 - d. Any engineered slopes created by the project shall be re-vegetated to a condition consistent with pre-project state.
 - e. Landscape plans shall also comply with the fuel modification zone and Biological report.
 - f. Final landscape and irrigation plans shall be prepared by a licensed landscape architect.
 - g. 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.
 - h. Landscape plans shall comply with all provisions of City Standards; contain all required landscaping and an irrigation system. The irrigation system shall include an automatic rain sensor switch, master valve, stainless steel enclosure for the backflow device, and stainless steel controller cabinet. The landscape plan shall list the quantities of each plant type, including a legend indicating what each symbol represents;

height and spread of trees (in accordance with City Minimum Tree Standards, City Council Resolution 2001-5747); and method of installation and irrigation.

- i. If applicable, plant material and irrigation design shall comply with the City's landscape Water Efficiency Ordinance, Chapter 20.330 of the San Marcos Municipal Code.
 - j. Prior to installation, the proposed plants shall be inspected and approved by the Planning Division for plant quality and compliance with minimum size requirements. The final installed placement of all plant materials shall in accordance with the landscape plan approved by the Planning Commission. Upon completion of installation, all landscaping/irrigation shall be inspected and approved by the Planning Division. The applicant/developer shall be responsible to contact the Planning Division for landscaping inspections.
9. New buildings and remodeled structures shall be designed to conform to the latest design standards adopted by the State of California in the California Building Code, Part 2, Title 24, California Code of Regulations.
 10. Building plans and instruments of service submitted with a building permit application shall be signed and sealed by a California licensed design professional as required by the State Business and Professions Code.
 11. The City of San Marcos is located in Seismic Design Category "D." Buildings and structures shall be designed to adequately transmit the dynamic lateral forces in accordance with the requirements of the latest adopted California Building Code.
 12. The storage, use or handling of hazardous, toxic or flammable materials shall be clearly indicated on all floor plans submitted for a building permit. Materials shall be identified in accordance with Health and Safety Code Section 25101.
 13. 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.
 14. The proposed new development is subject to the payment of School Fees as required by law.

15. In lieu of annexing the site into the Community Facilities Districts, the applicant shall pay the special taxes as required: For CFD 98-01IA1 (Police) the in-lieu fee is \$1,000.00, for CFD 2001-01 (Fire & Paramedic), the in-lieu fee is \$1,000.00, and for CFD 98-02 (Lighting & Landscaping), the in-lieu fee is \$1,000.00. Said in-lieu fees (\$3,000) shall be paid prior to issuance of a building permit.
 16. Construction plans shall indicate warning sign type and location. Warning signage shall be compliant with ANSI C95.2 color, symbol, and content conventions. Signage shall be written in English and Spanish. Prior to beginning unattended operation of this project, the applicant/operator shall first install the permanent warning signs and at all times thereafter maintain said signage in good condition. Signage shall at all times provide a working local or toll-free telephone number to its network operations center, and such telephone number shall be able to reach a live person who can exert transmitter power-down control over this site as required by the FCC. The location of signage must ensure that anyone approaching may clearly see the signage before entering the controlled zone.
 17. All construction and grading related BMPs shall be shown in detail on the construction plans submitted to the City for review and approval.
- G. During the construction phase, the following conditions shall be complied with:
1. 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 AM to 6:00 PM on Monday through Friday, and on Saturday between 8:00 AM and 5:00 PM. 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 and fines as appropriate. Citations for hours of work violations require a mandatory court appearance in North County Superior Court.
 2. Hauling of earth over residential streets of developed areas shall be avoided. Where not possible to avoid, a truck hauling route shall be submitted to the City and or County for approval prior to commencement of any grading operation. Such approved haul routes may require a greater structural section, to the satisfaction of the City Engineer and/or the Director of Public Works.
 3. During grading and construction operations, the applicant shall maintain public and private driveway and/or road access to neighboring properties at all times unless previous arrangements have been made with the private parties affected. Copies of said agreements shall be provided to the City Engineer.

4. 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 until removed from the site; and periodic cleaning of streets to remove accumulated materials.
 5. The applicant shall implement and maintain stormwater pollution prevention measures as required on the approved plans. Violations of the City's Stormwater Management Ordinance (Chp. 14.15 S.M.M.C.) will result in Stop Work Orders, Notices of Violations and/or citations with fines. Work on the project may be delayed until the City determines that compliance with stormwater requirements has been achieved.
- H. Prior to final inspection approval, the following conditions shall be complied with:
1. All landscaping shall be completed, and inspected and approved by the Planning Division. The applicant/developer shall be responsible to contact the Planning Division for inspection.
 2. The applicant shall submit a letter(s) by the landscape architect and engineer-of-work to the Planning Division certifying that the plant materials and irrigation system have been installed in accordance with the approved landscape plans and the Water Quality Improvement Plan, respectively. Any proposed modifications to the planting plan shall be approved by the City.
 3. The applicant shall evaluate the private roadways used for construction access to the project site (Golden Eagle Trail and a segment of Attebury Drive between Golden Eagle Trail and Questhaven Road and an additional segment of Questhaven Road from the San Marcos city limit, to the intersection of Attebury Drive) along the same limits as the pre-construction inspection and perform a comparative review of the conditions of the roadway. Any damage incurred as part of the construction activities shall be the responsibility of the applicant/developer to repair. In addition to the foregoing, the applicant has agreed to provide the additional sum of \$10,000 to the owners of the residences which have easement rights to Golden Eagle Trail, to use for repair or maintenance of that roadway as they see fit. Any defects or damage that occur as a result of regular use or are not directly related to the construction activities of the applicant/developer shall not be subject to this condition.
 4. If deemed necessary by the Planning Division Director, the applicant shall install additional leaves onto the leaf-covered socks of the mono-tree and antennas, as determined by the Planning Division Director, in order to screen the antennas, hardware, cables, etc. from view. The screening cost shall be paid for by the communication company.

5. The proposed development shall satisfy the conditions of approval. The contractor shall obtain approval from all City departments and other agencies before requesting a Final Inspection from the Development Services Department.
- I. Prior to full time operation of the facility, the applicant shall ensure (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.
- J. Within six (6) 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 (RF 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, the RF 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 RF Report shall also evaluate the cumulative emissions of the proposed project and the existing wireless telecommunication facilities to ensure compliance with the FCC regulations. 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.
- K. The project implementation report shall be subject to review and approval by the Planning Division. 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.
- L. The Ongoing operation of the facility and reliance on this Conditional Use Permit is subject to the following:
 1. The applicant/operator shall at all times comply with all FCC rules and regulations, including without limitation, the RF emissions safety requirements of FCC Office of Engineering Bulletin 65, and any successors thereto. It shall be

responsibility of the applicant to contact the City acknowledging any changes in the regulations that would affect the Telecommunications Facility.

2. If the Federal Communications Commission adopts new standards regarding this use, the applicant shall repeat the aforementioned monitoring and report cycle.
 3. 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.
 4. The mono-tree and equipment enclosure shall be maintained in good condition which includes replacing damaged or lost faux branches, leaves, bark cladding, and antenna covers, and painting of equipment and faux tree parts when necessary.
 5. All trees and landscaping installed with this project shall be maintained in a healthy and thriving manner for screening purposes of the proposed mono-tree and equipment enclosure. If any of said trees and/or landscaping perish or are destroyed, then the applicant/operator and/or property owner shall replace it in kind, size, and quantity to provide the same screening value as determined by the Planning Division Director.
 6. The applicant/operator shall, at its sole cost and expense, cause a licensed Arborist to monitor the project site annually throughout the term of this Conditional Use Permit, and to promptly submit a report to the Planning Division after each monitoring inspection which details their findings and recommendations. If the City determines it necessary to have the Arborist's monitoring report reviewed by a third party, the applicant/operator shall also be solely responsible for all costs associated with this review.
 7. The applicant/operator shall, at its sole cost and expense, submit an RF Report, including all components described in Condition "J" of this Conditional Use Permit shall also be conducted annually throughout the term of this Conditional Use Permit, and each annual RF Report detailing such findings shall thereafter be promptly submitted to the Planning Division. If the City determines it necessary to have the RF Report reviewed by a third party, the applicant/operator shall also be solely responsible for all costs associated with this review.
- M. If a modification or renewal of this Conditional Use Permit is processed and the existing 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.
- N. Any new construction, alteration, improvement, or modification to an existing structure requires the issuance of a building permit and compliance with the minimum code requirements of the latest adopted California Building Code.
- O. To the extent that a co-location is technically possible, the applicant/operator shall not oppose the potential future installation of other wireless communication antennas that consolidate at this site.
- P. The Planning Division may, but is not obligated to inspect the premises annually to ensure compliance with all conditions of this permit. If the Planning Division determines that compliance is not being achieved, then a public hearing shall be scheduled for possible Director's Permit modification or revocation.
- Q. This Conditional Use Permit shall expire on September 3, 2023. Any request for permit extension shall be applied for by the permittee no later than thirty (30) days prior to the expiration date.
- R. This Conditional Use Permit shall become null and void if not acted upon within twelve (12) months of the adoption of this resolution, or the approved use ceases to operate at the subject property for a period more than twelve (12) months.
- S. Applicant shall comply with all provisions and requirements set forth in the San Marcos Municipal Code, City ordinances, City policies and City resolutions, and with all applicable state and federal regulations, whether or not such provisions or requirements have been specifically set forth in these conditions, all of which are now incorporated herein by reference and fully set forth at this point.
- T. 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.
- U. 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 September 2013, by the following electronic vote:

AYES: COMMISSIONERS: FLODINE, JONES, MAAS, KILDOO, SCHAIBLE

NOES: COMMISSIONERS: NELSON, NORRIS

ABSENT: COMMISSIONERS: NONE

APPROVED:

Dean Nelson, Chairman
SAN MARCOS CITY PLANNING COMMISSION

ATTEST:

Lisa Kiss, Office Specialist III
SAN MARCOS CITY PLANNING COMMISSION

[NOTE: PURSUANT TO CITY COUNCIL RESOLUTION 2013-7854, ADOPTED ON OCTOBER 22, 2013, THE CITY COUNCIL DENIED THE APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF THIS CONDITIONAL USE PERMIT AND MODIFIED SPECIFIED CONDITIONS AS SET FORTH ABOVE]