

File No. 101041

Committee Item No. _____

Board Item No. 29

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date 09/14/10

Cmte Board

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| ☐ | ☐ | Motion |
| ☐ | ☐ | Resolution |
| ☐ | ☐ | Ordinance |
| ☐ | ☐ | Legislative Digest |
| ☐ | ☐ | Budget Analyst Report |
| ☐ | ☐ | Legislative Analyst Report |
| ☐ | ☐ | Introduction Form (for hearings) |
| ☐ | ☒ | Department/Agency Cover Letter and/or Report |
| ☐ | ☐ | MOU |
| ☐ | ☐ | Grant Information Form |
| ☐ | ☐ | Grant Budget |
| ☐ | ☐ | Subcontract Budget |
| ☐ | ☐ | Contract/Agreement |
| ☐ | ☐ | Award Letter |
| ☐ | ☐ | Application |
| ☐ | ☒ | Public Correspondence |

OTHER (Use back side if additional space is needed)

☐ ☐ Appeal of Determination of Exemption from Environmental

Review for 10 Bernal Heights Boulevard

* ☐ ☒ Planning Department's Appeal Response Attachments

Completed by: Joy Lamug

Date 09/09/10

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

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1065 A Hampshire Street
San Francisco, CA 94110

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SAN FRANCISCO

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AUG 2 2010

BY 

CITY & COUNTY OF S.F.
PLANNING DEPARTMENT
RECEPTION DESK

August 2, 2010

Angela Calvillo
Clerk, San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4689

RE: Appeal of Categorical Exemption from CEQA of Case No. 2010.0306C

Dear Ms. Calvillo,

I hereby appeal the planning department's Categorical Exception of Case no. 2010.0306C from environmental review under the California Environmental Quality Act (CEQA), a copy of which is attached to this letter.

The specific grounds for this appeal are the following:

1) Clearwire's multi-site linkage via wireless line-of-sight microwave point-to-point backhaul requires an evaluation of Clearwire's San Francisco network in its entirety for any potential significant environmental impacts prior to approvals of individual base stations and/or backhaul nodes.

2) Clearwire utilizes wireless point-to-point line-of-sight microwave backhaul to interconnect its network of base stations. Should these point-to-point microwave dishes lose alignment due to an earthquake or other damage to the structures to which they are attached, these highly directional beams may result in members of the public being exposed to radiation levels in excess of FCC exposure guidelines.

Attached please find a completed Neighborhood Organization Fee Waiver Request Form which I have signed on behalf of the Lower 24th Street Merchant Association. Also attached is a check in the amount of \$500 made payable to the San Francisco Planning Department. In addition to appellant, the Lower 24th Street Merchant Association, please include the following individual in any and all future notices or correspondence regarding this appeal: Robin Mackey 249 Bocana Street, S.F., CA 94110 email - robin.mackey@gmail.com. and should the fee waiver be approved, the attached check should be returned to Robin Mackey at the aforementioned address.

Thank you for your attention to this matter.



Erick Arguello
President
Lower 24th Street Merchant Association

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SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- ☐ Inclusionary Housing (Sec. 315)
☐ Jobs Housing Linkage Program (Sec. 313)
☐ Downtown Park Fee (Sec. 139)

- ☐ First Source Hiring (Admin. Code)
☐ Child Care Requirement (Sec. 314)
☐ Other

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

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415.558.6378

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Planning
Information:
415.558.6377

Planning Commission Motion No. 18131

HEARING DATE: JULY 1, 2010

Date: June 24, 2010
Case No.: 2010.0306C
Project Address: 10 Bernal Heights Boulevard
Current Zoning: RH-1(D) (Residential, House, Single-Family, Detached) District
40-X Height and Bulk District
Block/Lot: 5548 / 003
Project Sponsor: Joyce Chu
Modus Consulting
833 Market Street, Suite 805
San Francisco, CA 94103
jchu@moduscon.com
(909) 992-2212
for Clearwire
Staff Contact: Erika S. Jackson - (415) 558-6363
erika.jackson@sfgov.org

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CITY & COUNTY OF S.F.
PLANNING DEPARTMENT
RECEPTION DESK

ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION UNDER PLANNING CODE SECTIONS 209.6(b) AND 303 TO INSTALL A WIRELESS TELECOMMUNICATIONS FACILITY CONSISTING OF FIVE INTERNET EXCHANGE SWITCH ANTENNAS ON AN EXISTING 50 FOOT TALL COMMUNICATIONS TOWER AND TO MODIFY THE CONDITIONAL USE APPROVAL UNDER CASE NO. 2008.1157C TO CHANGE THE NUMBER OF ALLOWED ANTENNAS ON THE SITE WITHIN A RH-1(D) (RESIDENTIAL, HOUSE, SINGLE-FAMILY, DETACHED) ZONING DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On April 29, 2010, Joyce Chu (hereinafter "Project Sponsor"), made an application (hereinafter "application"), for Conditional Use (CU) authorization on the property at 10 Bernal Heights Boulevard, Lot 003 in Assessor's Block 5548, (hereinafter "Project Site") to install a wireless telecommunications facility consisting of 5 internet exchange switch antennas on an existing 50 foot tall communications tower at the top of the hill in Bernal Heights Park. The CU will modify the Conditional Use approval under Case No. 2008.1157C to modify the number of allowed antennas on the site. The Project Site is within the RH-1(D) (Residential, House, Single-Family, Detached) Zoning District, and a 40-X Height and Bulk District.

The San Francisco Planning Department (hereinafter "Department") determined the application to be categorically exempt from the environmental review process (CEQA) pursuant to exemption Classes 1, 3 and 11 of Title 14 of the California Administrative Code.

The Proposed Project as approved herein is consistent with the Project description contained in the categorical exemption and would not result in significant impacts not identified in the categorical exemption or cause significant effects already identified in the categorical exemption to be substantially more severe.

On July 1, 2010, the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on the application for a Conditional Use.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use in Application No. 2010.0306C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project Site is located at the top of the hill in Bernal Heights Park. The Project Site is owned and operated by American Tower Corporation and contains one equipment building and one approximately 50 foot tall telecommunications tower with 62 antennas. The antennas are operated by various tenants including Covad, WiLine, T-Mobile, and the City and County of San Francisco.
3. **Surrounding Properties and Neighborhood.** The Project Site is located within the Bernal Heights neighborhood. The Project Site is located on a parcel of land within the RH-1(D) Zoning District surrounded by the Bernal Heights Park, which is within the P Zoning District. Land uses surrounding the park are primarily residential.
4. **Proposal.** The proposal is to install a wireless telecommunications facility consisting of 5 internet exchange switch antennas on an existing 50 foot tall communications tower at the top of the hill in Bernal Heights Park and an associated equipment cabinet as part of a wireless transmission network operated by Clearwire. The CU will modify the Conditional Use approval under Case No. 2008.1157C to modify the amount of allowed antennas on the site. Each internet exchange switch antenna ranges from 1 foot to 2.5 feet in diameter. The equipment cabinet would be placed within the existing equipment structure on the hill.

5. **Past History and Actions.** On October 6, 1960, the Planning Commission, by Resolution No. 5313, authorized the construction of two approximately 50 foot tall telecommunications towers and an equipment building in Bernal Heights Park with a maximum of eight horn type antennas on each tower for use as a microwave radio relay station for telephone service. Research regarding the Project has found that there was only one tower constructed and that there are currently approximately 62 antennas on the tower.

On October 15, 2009, the Planning Commission authorized the installation a wireless telecommunications facility consisting of eight panel antennas and one dish antenna and related equipment as part of T-Mobile's wireless telecommunications network on the communications tower at the top of the hill in Bernal Heights Park and to modify the original Conditional Use approval under Case No. CU60.13 (Resolution 5313) to establish the existing tower configuration and number antennas on the site.

6. **Location Preference.** The WTS Facilities Siting Guidelines identify different types of buildings for the siting of wireless telecommunications facilities, with Location Preference 1 being the most desirable location and Location Preference 7 being the least desirable location. Under the Guidelines, the Project is a Location Preference Number 1, as it is a preferred location for a publicly used structure.
7. **Radio Waves Range.** The Project Sponsor has stated that the proposed wireless network will transmit calls by radio waves operating in the 2496-2690 Megahertz (MHZ) bands, which are regulated by the Federal Communications Commission (FCC) and which must comply with the FCC-adopted health and safety standards for electromagnetic radiation and radio frequency radiation.
8. **Radiofrequency (RF) Emissions:** The Project Sponsor retained Hammett & Edison, Inc., a radio engineering consulting firm, to prepare a report describing the expected RF emissions from the proposed facility. The Department of Public Health reviewed the report and determined that the proposed facility complies with the standards set forth in the Guidelines.
9. **Department of Public Health Review and Approval.** There are currently a large number of existing antennas located on a tower in the Bernal Hill Park. Existing RF levels at the ground level were less than 1% of the FCC public exposure limit. There were observed no other antennas within 100 feet of this site. Clearwire proposes to install five dish antennas. The antennas would be mounted at effective height of about 58 feet above the ground. The estimated ambient RF field from the proposed Clearwire transmitters at ground level is calculated to be 0.000012 mW/cm² which is 0.0012% of the FCC public exposure limit. The three dimensional perimeter of RF levels equal to the public exposure limit is calculated to extend 10 feet from the antennas. Due to the mounting locations the Clearwire antennas would not be accessible to the general public. Warning signs must be posted at the access points and the antennas in English, Spanish and Chinese.

10. **Maintenance Schedule.** The proposed facility would operate without on-site staff but with a one- or two-person maintenance crew visiting the property approximately once or twice a month and on an as-needed basis to service and monitor the facility.
11. **Community Outreach.** A Community Outreach Meeting was conducted for the Proposed Project. The meeting was held at 7:00 P.M. on Wednesday, June 16, at the Bernal Heights Recreation Center located at 500 Moultrie Street, San Francisco, CA. No members of the public attended the meeting.
12. **Five-year plan:** Clearwire submitted its latest five-year plan, as required, in April 2010.
13. **Public Comment.** The Department has received no public comments regarding the Proposed Project.
14. **Planning Code Compliance.** The Commission finds that the Project is consistent with the relevant provisions of the amendments to Planning Code in the following manner:
 - A. **Use.** Per Planning Code Section 209.6(b), a Conditional Use authorization is required for communications utilities in the RH-1(D) Zoning District.
15. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the Project does comply with said criteria in that:
 - A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Proposed Project will be generally desirable and compatible with the surrounding neighborhood because the Project will not conflict with the existing uses of the property. The Proposed Project will be comparable in size to the existing conditions. The approval of this authorization has been found, first and foremost, to insure public safety. The Proposed Project will also provide necessary facilities for emergency transmission and improved communication for the neighborhood, community and the region.
 - B. The Proposed Project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the Project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:
 - i Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The Proposed Project must comply with all applicable Federal and State regulations to safeguard the health, safety and to ensure that persons residing or working in the vicinity will not be affected, and prevent harm to other personal property.

An evaluation of potential health effects from RF radiation, conducted by the Department of Public Health, has concluded that the proposed wireless transmission facilities will have no adverse health effects if operated in compliance with the FCC-adopted health and safety standards. The Department has received information that the proposed wireless system must be operated so as not to interfere with radio or television reception in order to comply with the provisions of its license under the FCC.

The Department is developing a database of all such wireless communications facilities operating or proposed for operation in the City and County of San Francisco. All applicants are now required to submit information on the location and nature of all existing and approved wireless transmission facilities operated by the Project Sponsor. The goal of this effort is to foster public information as to the location of these facilities.

- ii The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

No increase in traffic volume is anticipated with the facilities operating unmanned, with a single maintenance crew visiting the site once a month or on an as-needed basis.

- iii The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

While some noise and dust may result from the erection of the antennas and transceiver equipment, noise or noxious emissions from continued use are not likely to be significantly greater than ambient conditions due to the operation of the wireless communication network.

- iv Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The subject site has ample landscaping and open space. There is a proposed condition requiring the Project Sponsor to submit and install landscaping per an approved landscaping plan. The installation of antennas on the existing tower will not affect the existing landscaping.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The Proposed Project is consistent with the stated purposes of RH-1(D) Districts in that the intended use is located at an existing tower approximately 50 feet tall.

16. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan.

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1:

Encourage development, which provides substantial net benefits and minimizes undesirable consequences. Discourage development, which has substantial undesirable consequences that cannot be mitigated.

Policy 2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

The Project would enhance the total city living and working environment by providing communication services for residents and workers within the City. Additionally, the Project would comply with Federal, State and Local performance standards.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 3:

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The site is an integral part of a new wireless communications network that will enhance the City's diverse economic base.

OBJECTIVE 4:

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 1:

Maintain and enhance a favorable business climate in the City.

Policy 2:

Promote and attract those economic activities with potential benefit to the City.

The Project would benefit the City by enhancing the business climate through improved communication services for residents and workers.

COMMUNITY SAFETY ELEMENT

Objectives and Policies

OBJECTIVE 3:

ENSURE THE PROTECTION OF LIFE AND PROPERTY FROM THE EFFECTS OF FIRE OR NATURAL DISASTER THROUGH ADEQUATE EMERGENCY OPERATIONS PREPARATION.

Policy 1:

Maintain a local agency for the provision of emergency services to meet the needs of San Francisco.

Policy 2:

Develop and maintain viable, up-to-date in-house emergency operations plans, with necessary equipment, for operational capability of all emergency service agencies and departments.

Policy 3:

Maintain and expand agreements for emergency assistance from other jurisdictions to ensure adequate aid in time of need.

Policy 4:

Establish and maintain an adequate Emergency Operations Center.

Policy 5:

Maintain and expand the city's fire prevention and fire-fighting capability.

Policy 6:

Establish a system of emergency access routes for both emergency operations and evacuation.

The Project would enhance the ability of the City to protect both life and property from the effects of a fire or natural disaster by providing communication services.

17. Planning Code Section 101.1(b) establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the Project does comply with said policies in that:

- A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

No neighborhood-serving retail use would be displaced and the wireless communications network will enhance personal communication services.

- B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

No residential uses would be displaced or altered in any way by the granting of this authorization.

- C. That the City's supply of affordable housing be preserved and enhanced,

The Project would have no adverse impact on housing in the vicinity.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

Due to the nature of the Project and minimal maintenance or repair, municipal transit service would not be impeded and neighborhood parking would not be overburdened.

- E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project would cause no displacement of industrial and service sector activity.

- F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

Compliance with applicable structural safety and seismic safety requirements would be considered during the building permit application review process.

- G. That landmarks and historic buildings be preserved.

No landmarks or historic buildings would be affected by the Project.

- H. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project will have no adverse impact on parks or open space, or their access to sunlight or vistas.

18. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
19. The Commission hereby finds that approval of the Determination of Compliance authorization would promote the health, safety and welfare of the City.

DECISION

The Commission, after carefully balancing the competing public and private interests, and based upon the Recitals and Findings set forth above, in accordance with the standards specified in the Code, hereby approves the Conditional Use authorization under Planning Code Sections 209.6(b) and 303 to install a wireless telecommunications facility consisting of five internet exchange switch antennas on an existing 50 foot tall communications tower at the top of the hill in Bernal Heights Park and to modify the Conditional Use approval under Case No. 2008.1157C to change the number of allowed antennas on the site within a RH-1(D) (Residential, House, Single-Family, Detached) Zoning District, a 40-X Height and Bulk District and subject to the conditions of approval attached hereto as Exhibit A.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this conditional use authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18131. The effective date of this Motion shall be the date of this Motion if not appealed (after the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the foregoing Motion was adopted by the Planning Commission on July 1, 2010.

Linda Avery
Commission Secretary

AYES: Commissioners, Miguel, Olague, Borden, Moore, Sugaya, Antonini

NAYS: None.

ABSENT: Lee

ADOPTED: July 1, 2010

Exhibit A

Conditions of Approval

Whenever "Project Sponsor" is used in the following conditions, the conditions shall also bind any successor to the Project or other persons having an interest in the Project or underlying property.

General Conditions

1. This approval is for Conditional Use authorization under Planning Code Sections 209.6(b) and 303 to install a wireless telecommunications facility consisting of 5 internet exchange switch antennas on an existing 50 foot tall communications tower at the top of the hill in Bernal Heights Park and to modify the Conditional Use approval under Case No. 2008.1157C to change the number of allowed antennas on the site within a RH-1(D) (Residential, House, Single-Family, Detached) Zoning District, a 40-X Height and Bulk District.
2. The Project approved by this Motion is in general conformity with the plans dated April 6, 2010, on file with the Department in the docket for Case No. 2010.0306C (labeled EXHIBIT B), reviewed and approved by the Commission on July 1, 2010.
3. This Conditional Use authorization restricts the number of towers in Bernal Heights Park to one and limits the number of antennas to 71. The antennas shall be limited further to no more than 19 dish antennas with a diameter of 4 feet or less, and 52 other types of antennas (including cable, panel, access, omni, radiowave, amplifier, bogner, whip, dipole, and yagi) at any time.
4. The Property Owner is responsible for the removal of the 9 inactive antennas on the Project Site.
5. The Property Owner is responsible for filing Building Permit Applications or for requiring tenants to file Building Permit Applications to legalize all existing antennas and for all future antennas on the site.
6. Installation of additional antennas beyond the 71 authorized by this Conditional Use Application requires the approval of a new Conditional Use Application.

Design

7. The final plans shall meet the standards of the Planning Code and be in general conformity with the plans approved by the Commission on July 1, 2010 as Exhibit B found in the Case docket.
8. Prior to the issuance of any building or electrical permits for the installation of the facilities, the Project Sponsor shall submit final scaled drawings for review and approval by the Planning Department ("Plan Drawings"). The Plan Drawings shall:
 - a. Structure and Siting. Identify all facility related support and protection measures to be installed. This includes, but is not limited to, the location(s) and method(s) of placement,

support, protection, screening, paint and/or other treatments of the antennas and other appurtenances to insure public safety, insure compatibility with urban design, architectural and historic preservation principles, and harmony with neighborhood character.

- b. For the Project Site, regardless of the ownership of the existing facilities: Identify the location of all existing antennas and facilities; and identify the location of all approved (but not installed) antennas and facilities.
- c. Emissions. Provide a report, subject to approval of the Zoning Administrator, that operation of the facilities in addition to ambient RF emission levels will not exceed adopted FCC standards with regard to human exposure in uncontrolled areas.

Performance

9. Project Implementation Report. The Project Sponsor shall prepare and submit to the Zoning Administrator a Project Implementation Report. The Project Implementation Report shall:

- a. Identify the three-dimensional perimeter closest to the facility at which adopted FCC standards for human exposure to RF emissions in uncontrolled areas are satisfied;
- b. Document testing that demonstrates that the facility will not cause any potential exposure to RF emissions that exceed adopted FCC emission standards for human exposure in uncontrolled areas.
- c. Compare test results for each test point with applicable FCC standards. Testing shall be conducted in compliance with FCC regulations governing the measurement of RF emissions and shall be conducted during normal business hours on a non-holiday week day with the subject equipment measured while operating at maximum power.
- d. The Project Implementation Report shall be prepared by a certified professional engineer or other technical expert approved by the Department. At the sole option of the Department, the Department (or its agents) may monitor the performance of testing required for preparation of the Project Implementation Report. The cost of such monitoring shall be borne by the Project Sponsor pursuant to the condition related to the payment of the City's reasonable costs.

10. Notification and Testing. The Project Implementation Report shall set forth the testing and measurements undertaken pursuant to Conditions 4 and 13.

11. Approval. The Zoning Administrator shall request that the Certification of Final Completion for operation of the facility not be issued by the Department of Building Inspection until such time that the Project Implementation Report is approved by the Department for compliance with these conditions.

12. Notification prior to Project Implementation Report. The Project Sponsor shall undertake to inform and perform appropriate tests for residents of any dwelling units located within 25 feet of the transmitting antennae at the time of testing for the Project Implementation Report.
 - a. At least twenty calendar days prior to conducting the testing required for preparation of the Project Implementation Report, the Project Sponsor shall mail notice to the Department, as well as to the resident of any legal dwelling unit within 25 feet of a transmitting antenna, of the date on which testing will be conducted. The Applicant will submit a written affidavit attesting to this mail notice along with the mailing list.
 - b. When requested in advance by a resident notified of testing pursuant to subsection (a), the Project Sponsor shall conduct testing of total power density of RF emissions within the residence of that resident on the date on which the testing is conducted for the Project Implementation Report.
13. Community Liaison. Within 10 days of the effective date of this authorization, the Project Sponsor shall appoint a community liaison officer to resolve issues of concern to neighbors and residents relating to the construction and operation of the facilities. Upon appointment, the Project Sponsor shall report in writing the name, address and telephone number of this officer to the Zoning Administrator. The Community Liaison Officer shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
14. Installation. Within 10 days of the installation and operation of the facilities, the Project Sponsor shall confirm in writing to the Zoning Administrator that the facilities are being maintained and operated in compliance with applicable Building, Electrical and other Code requirements, as well as applicable FCC emissions standards.
15. Screening.
 - a. To the extent necessary to ensure compliance with adopted FCC regulations regarding human exposure to RF emissions, and upon the recommendation of the Zoning Administrator, the Project Sponsor shall:
 - i. Modify the placement of the facilities;
 - ii. Install fencing, barriers or other appropriate structures or devices to restrict access to the facilities;
 - iii. Install multi-lingual signage, including the RF radiation hazard warning symbol identified in ANSI C95.2-1982, to notify persons that the facility could cause exposure to RF emissions; or
 - iv. Implement any other practice reasonably necessary to ensure that the facility is operated in compliance with adopted FCC RF emission standards.

- b. To the extent necessary to minimize visual obtrusion and clutter, installations shall conform to the following standards:
 - i. Antennas and back-up equipment shall be painted, fenced, landscaped or otherwise treated architecturally so as to minimize visual impacts;
 - ii. Rooftop installations shall be setback such that back-up facilities are not viewed from the street;
 - iii. Antennae attached to building facades shall be so placed, screened or otherwise treated to minimize any negative visual impact; and
 - iv. Although co-location of various companies' facilities may be desirable, a maximum number of antennas and back-up facilities on the Project Site shall be established, on a case-by-case basis, such that "antennae farms" or similar visual intrusions for the site and area is not created.
- 16. The Project Sponsor or Property Owner shall remove antennae and equipment that has been out of service for a continuous period of six months.
- 17. Periodic Safety Monitoring. The Project Sponsor shall submit to the Zoning Administrator 10 days after installation of the facilities, and every two years thereafter, a certification attested to by a licensed engineer expert in the field of EMR/RF emissions, that the facilities are and have been operated within the then current applicable FCC standards for RF/EMF emissions.
- 18. Emissions Conditions. It is a continuing condition of this authorization that the facilities be operated in such a manner so as not to contribute to ambient RF/EMF emissions in excess of then current FCC adopted RF/EMF emission standards; violation of this condition shall be grounds for revocation.
- 19. Noise and Heat. The WTS facility, including power source and cooling facility, shall be operated at all times within the limits of the San Francisco Noise Ordinance. The WTS facility, including power source and cooling facility, shall not be operated so as to cause the generation of heat that adversely affects a building occupant.
- 20. Implementation and Monitoring Costs.
 - a. The Project Sponsor, on an equitable basis with other WTS providers, shall pay the cost of preparing and adopting appropriate General Plan policies related to the placement of WTS facilities. Should future legislation be enacted to provide for cost recovery for planning, the Project Sponsor shall be bound by such legislation.
 - b. The Project Sponsor or its successors shall be responsible for the payment of all reasonable costs associated with the monitoring of the conditions of approval contained in this authorization, including costs incurred by this Department, the Department of Public Health, the Department of Electricity and Telecommunications, Office of the City Attorney, or any other appropriate City Department or agency pursuant to Planning Code Section 351(f)(2). The Planning Department shall collect such costs on behalf of the City.

- c. The Project Sponsor shall be responsible for the payment of all fees associated with the installation of the subject facility, which are assessed by the City pursuant to all applicable law.

21. All Conditions Basis for Revocation. The Project Sponsor or its successors shall comply fully with all conditions specified in this authorization. Failure to comply with any condition shall constitute grounds for revocation under the provisions of Planning Code Sections 174, 176 and 303(d). The Zoning Administrator shall schedule a public hearing before the Planning Commission to receive testimony and other evidence to demonstrate a finding of a violation of a condition of the authorization of the use of the facility and, finding that violation, the Commission shall revoke the Conditional Use authorization. Such revocation by the Planning Commission is appealable to the Board of Supervisors.

In the event that the project implementation report includes a finding that RF emissions for the site exceed FCC Standards in any uncontrolled location, the Zoning Administrator may require the Applicant to immediately cease and desist operation of the facility until such time that the violation is corrected to the satisfaction of the Zoning Administrator.

22. Complaints and Proceedings. Should any party complain to the Project Sponsor about the installation or operation of the facilities, which complaints are not resolved by the Project Sponsor, the Project Sponsor (or its appointed agent) shall advise the Zoning Administrator of the complaint and the failure to satisfactorily resolve such complaint. If the Zoning Administrator thereafter finds a violation of any provision of the Planning Code and/or any condition of approval herein, the Zoning Administrator shall attempt to resolve such violation on an expedited basis with the Project Sponsor. If such efforts fail, the Zoning Administrator shall refer such complaints to the Commission for consideration at the next regularly scheduled public meeting.

23. Severability. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other of the remaining provisions, clauses, sentences, or sections of these conditions. It is hereby declared to be the intent of the Commission that these conditions of approval would have been adopted had such invalid sentence, clause, or section or part thereof not been included herein.

24. Transfer of Operation. Any carrier/provider authorized by the Zoning Administrator or by the Planning Commission to operate a specific WTS installation may assign the operation of the facility to another carrier licensed by the FCC for that radio frequency provided that such transfer is made known to the Zoning Administrator in advance of such operation, and all conditions of approval for the subject installation are carried out by the new carrier/provider, and the authorizing Motion is recorded on the deed of the property stating the new carrier/provider and authorizing conditions of approval.

25. Compatibility with City Emergency Services. The facility shall not be operated, nor caused to transmit on or adjacent to any radio frequencies licensed to the City for emergency telecommunication services such that the City's emergency telecommunications system experiences interference, unless prior approval for such has been granted in writing by the City.

Motion No. 18131
Hearing Date: July 1, 2010

CASE NO. 2010.0306C
10 Bernal Heights Boulevard

ESG:\DOCUMENTS\Projects\CU\Bernal Heights 10\Clearwire\Motion (Conditional Use Authorization - Wireless).DOC



Robin Mackey
<robin.mackey@gmail.com>
08/02/2010 04:13 PM

To Erika.Jackson@sfgov.org
cc
bcc
Subject Re: Questions on Filing Appeals

Hi Erika,

i just tried to submit the Motion #18131 to Rick, the Clerk for the Board of Supervisors and he wouldn't accept it as approval. He said that i need the Certificate of Determination-Exemption from Environmental Review document. I'm here at the Planning Department (1660 Mission) and waiting for someone to help me get a copy of that certificate. Could you send it to me via email or give me a call at 699-7107 and I can get it in person.

Thanks. i appreciate all your help,
-Robin Mackey

On Tue, Jul 27, 2010 at 2:43 PM, <Erika.Jackson@sfgov.org> wrote:

Robin,

I received your voicemail requesting a copy of the CEQA document for Case #2010.0306C. The attached Motion #18131 serves as the approval of the Categorical Exemption. Please refer to the first paragraph on Page 2.

(See attached file: 18131.pdf)

Thanks,
Erika

→ Planning Com. Secretary is not in the office today.

Erika S. Jackson, AICP, LEED AP
City Planner
Southeast Neighborhood Planning Team
City and County of San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94103
tel: 415.558.6363 / fax: 415.558.6409
e-mail: erika.jackson@sfgov.org
www.sfplanning.org

Scott
Sanchez/CTYPLN/SF
GOV

To

Robin Mackey
07/27/2010 01:01 <robin.mackey@gmail.com>

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Questions on Filing Appeals Inbox X

Robin Mackey

Hi Scott, I am looking for some information on the CEQA appeal.

Scott.Sanchez@sfgov.org to Erika.Jackson, me

show details Jul 27 (6 days ago)

Hi Robin,

Thank you for the email. Both appeals (Conditional Use and CEQA) need to be filed within 30-days of the Planning Commission's action.

Regards,
Scott F. Sanchez
Acting Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103Tel: 415.558.6350
Fax: 415.558.6409E-mail: scott.sanchez@sfgov.org
Webpage: <http://www.sfgov.org/planning>
UPN Project: <http://www.sfgov.org/upn>Robin Mackey
robin.mackey@gmail.com

To:

Scott.Sanchez@sfgov.org

07/27/2010 12:18 PM

Subject

Questions on Filing Appeals

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Reply to all

Forward

Robin Mackey to Doug

show details Jul 27 (6 days ago)

Page 1

- Show quoted text -

Reply

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Doug Loranger to me

show details Jul 27 (6 days ago)

Page 1

Thanks. So if you haven't done so, you have the option of calling Sheila at Sup. Campos' office again, confirming that she is aware of the procedure whereby 5 Supervisors can sponsor a Conditional Use Appeal, and asking whether Sup. Campos would be willing to gather the signatures of 4 additional Supervisors to do so.

Otherwise, you have until Monday to obtain the signatures of 20% of the property owners within a 300-ft. radius of the property on which the antennas will be placed, using a this Conditional Use Appeal form from the Board of Supervisors:

<http://www.sfgov.org/Planning/Document.aspx?documentid=2522>

If Sup. Campos is willing to try to find 4 other Supervisors, I don't know if you still use this form. You would have to check with Joy of the Clerk's office of the Board of Supervisors.

You may also have to pay an additional \$500 to cover the Conditional Use Appeal fee (in addition to the \$300 for the CEQA appeal).

Otherwise, you will just have your CEQA appeal, assuming you can put together the \$500 filing fee and the supporting letter and documents before next Monday.

- Show quoted text -

Reply

Forward

to me, Scott.Sanchez

show details Jul 27 (6 days ago)

Robin,
I received your voicemail requesting a copy of the CEQA document for Case #2010.0308C. The attached Motion #18131 serves as the approval of the Categorical Exemption. Please refer to the first paragraph on Page 2.

(See attached file: 18131.pdf)

Thanks,
ErikaErika S. Jackson, AICP, LEED AP
City Planner
Southeast Neighborhood Planning Team

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AUG 2 2010

CITY & COUNTY OF S.F.
PLANNING DEPARTMENT
RECEPTION DESK

Hi Erika,
I just found your email saying that the attached Motion #18131 would serve as approval of the Categorical Exemption.
Thanks, Robin

City and County of San Francisco Planning Department
 1650 Mission Street, Suite 400
 San Francisco, California 94103
 tel: 415.558.6363 / fax: 415.558.6409
 e-mail: erika.jackson@sfgov.org
www.sfgovplanning.org

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AUG 2 2010

CITY & COUNTY OF S.F.
 PLANNING DEPARTMENT
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Scott
 Sanchez/CTYPLN/SF
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To

07/27/2010 01:01 PM

Re: Questions on Filing Appeals
 (Document link: Erika Jackson)

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SAN FRANCISCO PLANNING DEPARTMENT

RECEIVED

AUG 2 2010

CITY & COUNTY OF S.
PLANNING DEPARTMENT
RECEPTION DESK
1660 Mission St.
Suite 400
San Francisco, CA 94103-2479

NEIGHBORHOOD ORGANIZATION FEE WAIVER REQUEST FORM

Appeals to the Board of Supervisors

This form is to be used by neighborhood organizations to request a fee waiver for CEQA and conditional use appeals to the Board of Supervisors.

Should a fee waiver be sought, an appellant must present this form to the Clerk of the Board of Supervisors or to Planning Information Counter (PIC) at the ground level of 1660 Mission Street along with relevant supporting materials identified below. Planning staff will review the form and may sign it 'over-the-counter' or may accept the form for further review.

Should a fee waiver be granted, the Planning Department would not deposit the check, which was required to file the appeal with the Clerk of the Board of Supervisors. The Planning Department will return the check to the appellant.

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

TYPE OF APPEAL FOR WHICH FEE WAIVER IS SOUGHT

[Check only one and attach decision document to this form]

- ☐ Conditional Use Authorization Appeals to the Board of Supervisors
- ☒ Environmental Determination Appeals to the Board of Supervisors (including EIR's, NegDec's, and CatEx's, GREs)

REQUIRED CRITERIA FOR GRANTING OF WAIVER

[All criteria must be satisfied. Please check all that apply and attach supporting materials to this form]

- ☒ The appellant is a member of the stated neighborhood organization and is authorized to file the appeal on behalf of that organization. Authorization may take the form of a letter signed by the president or other officer of an organization.
- ☐ The appellant is appealing on behalf of a neighborhood organization which is registered with the Planning Department and which appears on the Department's current list of neighborhood organizations.
- ☐ The appellant is appealing on behalf of a neighborhood organization, which was in existence at least 24 months prior to the submittal of the fee waiver request. Existence may be established by evidence including that relating to the organization's activities at that time such as meeting minutes, resolutions, publications, and rosters.
- ☐ The appellant is appealing on behalf of a neighborhood organization, which is affected by the project, which is the subject of the appeal.

APPELLANT & PROJECT INFORMATION [to be completed by applicant]

Name of Applicant: <u>Erick Arguello</u>	Address of Project: <u>10 Bernal Heights Blvd.</u>
Neighborhood Organization: <u>Lower 24th St. Merchants</u>	Planning Case No: <u>2010.0306C</u>
Applicant's Address: <u>1065 A Hampshire St. Area</u>	Building Permit No:
Applicant's Daytime Phone No: <u>415-962-5893</u>	Date of Decision: <u>July 1, 2010</u>
Applicant's Email Address: <u>Erick.94110@aol.com</u>	

DCP STAFF USE ONLY

- ☐ Appellant authorization
- ☐ Current organization registration
- ☐ Minimum organization age
- ☐ Project impact on organization

Planner's Name: Erika Jackson

Date: _____

Planner's Signature: _____

■ WAIVER APPROVED

■ WAIVER DENIED

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 544-5227

August 10, 2010

Erick Arguello, President
Lower 24th Street Merchant Association
1065 A Hampshire Street
San Francisco, CA 94110

Subject: Appeal of Determination of Exemption from Environmental Review for a Project Located at 10 Bernal Heights Boulevard

Dear Mr. Arguello:

The Office of the Clerk of the Board is in receipt of a memorandum dated August 6, 2010, (copy attached) from the City Attorney's office regarding the timely filing of an appeal of Determination of Exemption from Environmental Review for the property located at 10 Bernal Heights Boulevard.

The City Attorney has determined that the appeal was filed in a timely manner.

A hearing date has been scheduled on **Tuesday, September 7, 2010, at a time to be determined**, at the Board of Supervisors meeting to be held in City Hall, Legislative Chamber, Room 250, 1 Dr. Carlton B. Goodlett Place, San Francisco.

Pursuant to the Interim Procedures 7 and 9, please provide to the Clerk's Office by:

8 days prior to the hearing: any documentation which you may want available to the Board members prior to the hearing;
11 days prior to the hearing: names of interested parties to be notified of the hearing.

Please provide 18 copies of the documentation for distribution, and, if possible, names of interested parties to be notified in label format.

If you have any questions, please feel free to contact Rick Caldeira at (415) 554-7711 or Joy Lamug at (415) 554-7712.

Very truly yours,

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo
Clerk of the Board

c:
Cheryl Adams, Deputy City Attorney
Kate Stacy, Deputy City Attorney
Marlena Byrne, Deputy City Attorney
Scott Sanchez, Acting Zoning Administrator, Planning Department
Bill Wycko, Environmental Review Officer, Planning Department

AnMarie Rodgers, Planning Department
Tara Sullivan, Planning Department
Nannie Turrell, Planning Department
Robin Mackey, 249 Bocana Street, San Francisco, CA 94110

422

(

((

((

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MARLENA G. BYRNE
Deputy City Attorney

DIRECT DIAL: (415) 554-4620
E-MAIL: marlena.byrne@sfgov.org

MEMORANDUM

TO: Angela Calvillo
Clerk of the Board of Supervisors

FROM: Marlena G. Byrne
Deputy City Attorney *(MGB)*

DATE: August 6, 2010

RE: Appeal of Determination of Exemption from Environmental Review for Project
Located at 10 Bernal Heights Boulevard

You have asked for our advice on the timeliness of an appeal to the Board of Supervisors by Erick Arguello, on behalf of the Lower 24th Street Merchant Association, received by the Clerk's Office on August 2, 2010, of the Planning Department's determination that a project located at 10 Bernal Heights Boulevard is exempt from environmental review under the California Environmental Quality Act ("CEQA"). The proposal would install a wireless telecommunications facility consisting of five internet exchange switch antennas on an existing 50-foot tall communications tower at the top of the hill in Bernal Heights Park. The Appellant provided a copy of Planning Commission Motion No. 18131, which included the exemption determination for the proposed project.

On July 1, 2010, following a noticed public hearing, the Planning Commission approved a conditional use permit for the proposed project, by Motion No. 18131. We are advised that the Clerk of the Board of Supervisors accepted an appeal of the conditional use permit as timely filed on Monday, August 2, 2010 because the 30-day period to file an appeal of the conditional use permit fell on Saturday, July 31, 2010, when the Clerk's Office would have been closed.

For a project requiring a conditional use permit, an appeal of an exemption determination under CEQA will be ripe and timely if filed after the Planning Commission approved the conditional use permit but before the 30-day period for appeal of the conditional use permit to the Board of Supervisors expires. Given the above information, it is our view that the appeal is ripe and timely. Therefore, the appeal should be calendared before the Board of Supervisors. We recommend that you so advise the Appellant.

Please let us know if we may be of further assistance.

MGB

cc: Rick Caldeira, Deputy Director, Clerk of the Board
Cheryl Adams, Deputy City Attorney
Kate Stacy, Deputy City Attorney
John Rahaim, Director, Planning Department
Scott Sanchez, Acting Zoning Administrator, Planning Department
Bill Wycko, Environmental Review Officer, Planning Department

CITY HALL • 1 DR. CARLTON B. GOODLETT PLACE, ROOM 234 • SAN FRANCISCO, CALIFORNIA 94102
RECEPTION: (415) 554-4700 FACSIMILE: (415) 554-4757

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Memorandum

TO: Angela Calvillo
Clerk of the Board of Supervisors
DATE: April 6, 2010
PAGE: 2
RE: Appeal of Determination of Exemption from Environmental Review for Project
Located at 10 Bernal Heights Boulevard

Elaine Forbes, Chief Administrative Officer, Planning Department
AnMarie Rodgers, Planning Department
Tara Sullivan, Planning Department
Nannie Turrell, Planning Department
Erika Jackson, Planning Department

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NOTICE OF CANCELLED MEETING

SAN FRANCISCO BOARD OF SUPERVISORS

NOTICE IS HEREBY GIVEN that the meeting of the San Francisco Board of Supervisors scheduled for Tuesday, September 7, 2010, at 2:00 p.m. at 1 Dr. Carlton B. Goodlett Place, Room 250, San Francisco, California, has been **CANCELLED**. Agenda items are being moved to the Regular Meeting of Tuesday, September 14, 2010, at 2:00 p.m., unless otherwise indicated.

Please note, Special Order agenda items, scheduled for 2:30 p.m. will be heard at the Regular Meeting of the Board of Supervisors next Tuesday, September 14, 2010, at 2:30 p.m.

A handwritten signature in black ink, appearing to read "Angela Calvillo".

Angela Calvillo, Clerk of the Board

POSTED: September 7, 2010

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2010 SEP -3 PM 4:47

BY QC

249 Bocana Street
San Francisco, Ca 94110

September 3, 2010

Angela Calvillo
Clerk, Board of Supervisors
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: Appeal of Categorical Exemption from CEQA and Appeal of CUP,
Planning Case 2010.0306C, 10 Bernal Heights Blvd.

Dear Ms. Calvillo,

I am writing to inform the Board of Supervisors that I agree to Clearwire's request for a continuance of the hearings for the appeals from CEQA and of CUP originally calendared for Tuesday, September 7 at 2:30pm and request that they be scheduled at the latest possible date.

Thank you for your consideration,



Robin Mackey,
Bernal Heights Community Action

cc: Supervisor David Chiu, President of the Board
Supervisor David Campos
Supervisor Eric Mar
Supervisor Michela Alioto-Pier
Supervisor Carmen Chu
Supervisor Ross Mirkarimi
Supervisor Chris Daly
Supervisor Sean Elsbernd
Supervisor Bevan Duffy
Supervisor Sophie Maxwell
Supervisor John Avalos
Erika Jackson, Planning Department
Joyce Chu, Project Sponsor for Clearwire

BOARD of SUPERVISORS



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NOTICE OF PUBLIC HEARING

BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO

NOTICE IS HEREBY GIVEN THAT the Board of Supervisors of the City and County of San Francisco will hold a public hearing to consider the following proposal and said public hearing will be held as follows, at which time all interested parties may attend and be heard:

¹⁴
Date: Tuesday, September 7, 2010

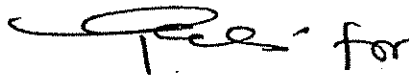
Time: 2:30 p.m.

Location: Legislative Chamber, Room 250 located at City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

Subject: Hearing of persons interested in or objecting to the decision of the Planning Commission's July 1, 2010, Determination of Exemption from Environmental Review identified as Planning Case No. 2010.0306C, by its Motion No. 18131 which included the exemption determination, that a project located at 10 Bernal Heights Boulevard is exempt from environmental review under California Environmental Quality Act (CEQA) Guidelines Sections 15301 (Class 1), 15303 (Class 3), and 15311 (Class 11). The proposal would install a wireless telecommunications facility consisting of five internet exchange switch antennas on an existing 50-foot tall communications tower at the top of the hill in Bernal Heights Park within the RH-1(D) (Residential, House, Single-Family, Detached) Zoning District, and a 40-X Height and Bulk District, on property located at 10 Bernal Heights Boulevard, Lot No. 003, in Assessor's Block No. 5548. (District 9) (Appellant: Erick Arguello on behalf of the Lower 24th Street Merchant Association)

Pursuant to Government Code Section 65009, notice is hereby given, if you challenge, in court, the matter described above, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at, or prior to, the public hearing.

In accordance with Section 67.7-1 of the San Francisco Administrative Code, persons who are unable to attend the hearing on these matters may submit written comments to the City prior to the time the hearing begins. These comments will be made a part of the official public records in these matters, and shall be brought to the attention of the Board of Supervisors. Written comments should be addressed to Angela Calvillo, Clerk of the Board, Room 244, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102. Information relating to this matter is available in the Office of the Clerk of the Board and agenda information will be available for public review on Thursday, September 2, 2010.

A handwritten signature in black ink, appearing to read "Angela Calvillo" followed by "for".

Angela Calvillo
Clerk of the Board

DATED: August 27, 2010



SAN FRANCISCO PLANNING DEPARTMENT

Categorical Exemption Appeal 10 Bernal Heights Boulevard

DATE: August 31, 2010
TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: John Rahaim, Planning Director - Planning Department (415) 558-6411
Erika S. Jackson, Case Planner - Planning Department (415) 558-6363
RE: File No. 10-1041; Planning Case No. 2010.0306C
Appeal of the Categorical Exemption for 10 Bernal Heights Boulevard
HEARING DATE: September 7, 2010

ATTACHMENTS:

- A. Planning Commission Motion 18131, dated July 1, 2010
- B. Site maps
- C. Department of Public Health Referral Reports (March 30, 2008 and April 16, 2010)
- D. Planning Commission Motion 17964, dated October 15, 2009
- E. Clearwire 5-year Plan
- F. Site photographs
- G. Plans

PROJECT SPONSOR: William Stephens, 204 Bay Vista Circle, Sausalito, CA 94965-1081, (510) 612-2511

APPELLANT: Erick Arguello, Lower 24th Merchant Association, 1065A Hampshire Street, San Francisco, CA 94110, (415) 902-5893

INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors (the "Board") regarding the Planning Department's (the "Department") issuance of a Categorical Exemption under the California Environmental Quality Act ("CEQA Determination") for a project at 10 Bernal Heights Boulevard (the "Project").

The Department, pursuant to Title 14 of the CEQA Guidelines, approved a Categorical Exemption for 10 Bernal Heights on March 30, 2008, finding that the proposed project will not have an adverse impact.

The decision before the Board is whether to uphold the Department's decision to issue a categorical exemption and deny the appeal, or to overturn the Department's decision to issue a categorical exemption and return the project to the Department staff for additional environmental review.

BY

2010 SEP -1 PM 12:05

1650 Mission St.
Suite 400
San Francisco
CA 94103-2479
RECEPTION
415.558.6378
415.558.6409
PLANNING
INFORMATION
415.558.6377

SITE DESCRIPTION & PRESENT USE

The Project Site is located at the top of the hill in Bernal Heights Park. The site is owned and operated by American Tower Corporation and contains one equipment building and an approximately 50 foot tall telecommunications tower with 62 antennas installed. The antennas are operated by various tenants including Covad, WiLine, T-Mobile, and the City and County of San Francisco.

SURROUNDING PROPERTIES AND NEIGHBORHOOD

The Project Site is located within the Bernal Heights neighborhood and is zoned RH-1(D) (Residential, House, Single-Family, Detached). The parcel is surrounded by the Bernal Heights Park which is within a P Zoning District. Land uses surrounding the park are primarily residential.

PROJECT DESCRIPTION

The project is to modify the previously-approved telecommunications installation on the existing tower in Bernal Heights Park. Specifically, the project will modify the type of antennas authorized on the site. The current authorization is for 14 dish antennas and 57 panel antennas on the tower (with a total of 71 permitted on the site). Clearwire (the project sponsor) requested to modify the type of antennas to 19 dish and 52 panel antennas (Clearwire would install 5 dish antennas in total). Each dish ranges from 1 to 2.5 feet in diameter, and the associated equipment cabinet would be placed within the existing equipment structure on the hill.

BACKGROUND

Original Telecommunication Towers Approved

On October 6, 1960, the Planning Commission, by Resolution No. 5313, authorized the construction of two approximately 50 foot tall telecommunications towers and an equipment building in Bernal Heights Park with a maximum of eight horn type antennas on each tower for use as a microwave radio relay station for telephone service. Research regarding that project has found that there was only one tower constructed and that there are currently approximately 62 antennas on the tower.

Modification to the 1960 Conditional Use Authorization

On October 2, 2008, T-Mobile filed a Conditional Use Authorization application (Planning Case No. 2008.1157C) to install eight panel antennas and one dish antenna and related equipment as part of its wireless telecommunications network on the existing 50 foot tall tower in Bernal Heights Park.

The Department requested that a survey be completed on the number and type of antennas that are on the Bernal Heights tower. The results showed that the number of existing antennas on the communication tower exceeded what was permitted in the 1960 Conditional Use Authorization. As a result, the Department asked T-Mobile to work with the towers owner, American Tower Corporation ("ATC"), to bring the existing facilities into compliance with that Conditional Use Authorization. ATC submitted a Business Plan and Equipment Inventory to the Department.

This plan outlined the tenant(s), service type, and equipment type for each of the 62 existing active antennas, the 9 antennas proposed to be installed by T-Mobile, and 9 existing dead antennas. The plan also outlined the projected additional facilities over the next 3-5 years as 27 new antennas (15 panel antennas, 4 omni antennas, and 8 microwave dishes ranging in size from 2 to 4 feet in diameter).

As a result of this plan, T-Mobile's Conditional Use Authorization application was to do the following:

1. Legalize the antennas installed on the tower within the past 50 years;
2. Set a maximum number of antennas on the site that is compatible with current technology demands;
3. Remove the existing 9 'dead' antennas; and
4. Streamline the process for future antenna tenants.

On October 15, 2009, the Commission granted a Conditional Use Authorization to install 8 panel antennas, 1 dish antenna, and related equipment on the Bernal Heights tower. The Commission also modified the 1960 Conditional Use approval under Case No. CU60.13 (Resolution 5313) to establish the existing tower configuration and number of antennas on the site.

The 1960 approval was for two cellular towers with eight antennas each. The Commission recognized that technology demands have changed over the past 50 years and set the maximum number of antennas permitted on the tower. The Commission came up with the final number by adding the existing antennas on the tower (including the dead antennas) plus the 9 proposed T-Mobile antennas for a total of 71 antennas. The Commission authorized the October 2008 Conditional Use Authorization with the following conditions:

1. The Conditional Use Authorization restricts the number of towers in Bernal Heights Park to one and limits the number of antennas to 71. The antennas will consist of 14 dish antennas (with a diameter of 4 feet or less) and 57 other types of antennas (including cable, panel, access, omni, radiowave, amplifier, bogner, whip, dipole, and yagi) at any time.
2. The Property Owner is responsible for the removal of the 9 inactive antennas on the tower.
3. The Property Owner is responsible for requiring tenants to file Building Permit Applications to legalize all existing antennas.
4. Installation of additional antennas beyond the 71 authorized requires the approval of a new Conditional Use Authorization. Carriers may upgrade or install new panel antennas with a building permit and Department review as long as the proposal conforms to the Conditional Use Authorization (i.e., number and type).

5. Prior to Department approval of T-Mobile's Building Permit Application, a new landscaping plan must be submitted for the Project Site and approved by the Zoning Administrator. Prior to permit issuance, the Project Sponsor shall install landscaping per the approved plan.

As of October 2009, as long as a carrier matched the type of antennas approved by the Commission, they could install them with a building permit.

Clearwire Conditional Use Authorization Application Filed

On April 29, 2010, Clearwire submitted a Conditional Use Authorization application to install 5 dish antennas on the Bernal Heights tower. Because the number of dish antennas exceed what the Commission approved in October 2009 (by 2 dish antennas), Clearwire had to request a modification of the Conditional Use Authorization. The total number of antennas remained 71, but the number of dish would increase from 14 to 19.

The Department determined the application to be categorically exempt from the environmental review process (CEQA) pursuant to exemption Classes 1, 3 and 11 of Title 14 of the California Administrative Code.

The Department of Public Health ("DPH") reviewed the Project and found that it would comply with the current Federal Communication Commission safety standards for radiofrequency radiation exposure and with the Planning Department's Wireless Guidelines, as outlined in a report to the Department dated April 27, 2010.

The WTS Facilities Siting Guidelines identify different types of buildings for the siting of wireless telecommunications facilities, with Location Preference 1 being the most desirable location and Location Preference 7 being the least desirable location. Under the Guidelines, 10 Bernal Heights is a Location Preference Number 1, as it is a preferred location on a publicly used structure.

2010 Conditional Use Authorization Hearing

On June 24, 2010, the Commission granted a Conditional Use Authorization authorizing the modification of the types of antennas permitted on the tower, allowing Clearwire to install five internet services exchange round dish antennas. In doing so, the Commission modified the Conditional Use Authorization under Case No. 2008.1157C to change the number of allowed antennas on the site from 14 round dish antennas and 57 panel antennas to 19 round dish antennas and 52 panel antennas.

The Commission allowed the modification of the types of antennas because they found the impact of the two types of antennas to be comparable to what was approved in 2009. The round dish antennas proposed by Clearwire range from 1 foot to 2 feet in diameter and have a substantially lower surface area than panel antennas. Additionally, the round dish antennas are much smaller and have a substantially lower visual impact than the inactive ("dead") antennas that are currently on the tower that would be replaced by the Clearwire antennas. Lastly, there is

a substantially lower RF emissions level at ground level due to the point-to-point feature of the round dish antenna that concentrates the signal in a linear beam and does not allow the signal to reach ground level as it does with panel antennas.

Please note that regardless of the outcome of this appeal, Clearwire and other carriers will be able to install new antennas within the maximum number of 71 antennas on the tower that was set by the Conditional Use Authorization Motion 17964, approved on October 15, 2009. Clearwire filed a Conditional Use Authorization application was to modify the type of antennas allowed at the site to fit their technology and business model.

CEQA GUIDELINES

Categorical Exemptions

Section 21084 of the California Public Resources Code requires that the CEQA Guidelines identify a list of classes of projects that have been determined not to have a significant effect on the environment and are exempt from further environmental review.

In response to that mandate, the State Secretary of Resources found that certain classes of projects, which are listed in CEQA Guidelines Sections 15301 through 15333, do not have a significant impact on the environment, and therefore are categorically exempt from the requirement for the preparation of further environmental review.

Exempt Status

CEQA State Guidelines Section 15301, or Class 1, provides an exemption from environmental review for the operation, repair, maintenance, permitting, leasing, licensing and minor alteration of existing public or private structures, facilities, mechanical equipment, including both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services, involving negligible expansion of use. Class 1 includes additions to existing structures of no more than 10,000 square feet provided the project is in an area where all public services and facilities are available and the area in which the project is located is not environmentally sensitive. The proposed project would add five permitted antenna to an existing 50 foot tall telecommunications tower and is therefore exempt under Class 1 from environmental review.

CEQA State Guidelines Section 15303, or Class 3, provides for an exemption from environmental review for construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. CEQA State Guidelines Section 15303(d) specifically applies to utility extensions. Thus, the proposed installations are covered by the range of activities properly exempted pursuant to Class 3.

CEQA State Guidelines Section 15311, or Class 11, applies to construction, or replacement of minor structures accessory to existing facilities. The additional antennas are accessory to the existing communications tower and therefore meet the criteria of Class 11.

Public Views and Aesthetics

In evaluating whether the proposed wireless telecommunications facility would be exempt from environmental review, the Department determined that it would not result in a significant impact to public views and aesthetics. Visual quality, by its nature, is highly subjective and different viewers may have varying opinions as to whether the proposed wireless facility contributes negatively to the visual landscape of the City and its neighborhoods.

It should be noted that CEQA's primary focus regarding visual impact is on scenic vistas within the public realm and the impact of the project on the existing scenic environment. The CEQA Guidelines provide an Initial Study Checklist which indicates that assessments of significant impacts on visual resources should consider whether the project would result in: (1) a substantial, demonstrable negative aesthetic effect; (2) a substantial degradation or obstruction of any scenic view or vista now observed from public areas; or (3) generation of obtrusive light or glare substantially impacting other properties.

The proposed project would not result in any of these conditions for the reasons described below.

Clearwire proposed to install 5 internet services exchange round dish antennas on an existing 50 foot tall telecommunications tower at the top of the hill in Bernal Heights Park. The antennas would be installed at approximately 58 feet above the ground level. The proposed wireless facilities would be visible to passersby and observers from nearby buildings and streets. However, the antennas would be located on a tower constructed for the purpose of housing telecommunications antennas. The related equipment would be placed within the existing building on the site. The antennas would be viewed within the immediate context of the existing telecommunications tower containing 71 antennas. Telecommunications facilities have existed in this location since 1960, and thus the incremental visual effect of the proposed facilities would be minimal. In addition, the proposed wireless facilities would not generate any obtrusive light or glare. The Department reviewed computer-generated photosimulations from the project sponsor of the proposed wireless facility which support the Department's conclusion that the proposed project would have a negligible effect on public views and aesthetics.

In reviewing aesthetics under CEQA generally, consideration of the existing context in which a project is proposed is required and evaluation must be based on the impact on the existing environment. That some people may not find them attractive does not mean that they create a significant aesthetic environmental impact. For the proposed project, the context is an existing 50 foot tall telecommunications tower with 71 antennas constructed for the purpose of housing telecommunications antennas. The proposed wireless facility is thus consistent with the existing developed environment and therefore cannot be deemed an "unusual circumstance." For those same reasons, the "unusual circumstance" exception to the categorical exemptions is not

applicable to aesthetic impacts that are similar to existing structures. This wireless facility would not be unusual and would not create adverse aesthetic impacts on the environment.

For all the above reasons, the Department concluded that the installation of the proposed project would not result in a significant adverse effect on public views or aesthetics.

Exceptions to Exemptions/Exclusions from Environmental Review

CEQA Guidelines Section 15300.2 lists exceptions to the use of categorical exemptions. The exceptions include that an exemption shall not be used 1) where there is a reasonable possibility that the activity would have a significant effect on the environment due to unusual circumstances (Section 15300.2(c)); 2) where the project would cause a substantial adverse change in the significance of a historical resource (Section 15300.2(f)); and 3) where the project would result in a significant cumulative impact (Section 15300.2(b)). As described below, there are no conditions associated with the proposed project that would suggest the possibility of a significant environmental effect.

a) Radiofrequency Radiation

The proposed equipment would generate radiofrequency (RF) radiation. The applicant submitted a report evaluating the RF emissions that would be generated by the proposed project. The report concludes that the wireless telecommunications facilities, as proposed, comply with the prevailing FCC-adopted health and safety standards limiting human exposure to RF energy, and would not cause a significant effect on the environment. Pursuant to DPW Order No. 177,163, prior to approval of a Personal Wireless Service Facilities Permit, the Department of Public Health ("DPH") ensures that proposed project's RF emissions comply with FCC-adopted public exposure limits.

For the reasons described above, the operation of the proposed wireless telecommunications facilities would not pose a health hazard to the general public. Therefore, the proposed project would not result in a significant effect with regard to RF emissions, and this issue would not trigger an exception to the use of a categorical exemption.

b) Historical Resources

The proposed site contains no historic resources and the Department concluded that the proposed project would not cause a significant impact to a historic resource. Therefore, this issue would not trigger an exception to the use of a categorical exemption.

c) Structural Integrity

The proposed project would involve installation of equipment on an existing telecommunications tower. The structural soundness of the proposed wireless facilities and the existing telecommunications tower are ensured by Department of Building Inspection procedures outlined within the Building Code. As such, there are no structural integrity issues that would pose potential significant environmental effects under CEQA, and this issue would not trigger an exception to the use of a categorical exemption.

d) Cumulative Impacts

CEQA State Guidelines Section 15300.2(b) provides that a categorical exemption shall not apply if significant impacts would result over time from successive projects of the same type in the same place. The proposed project involves the installation of 5 antennas that are within the maximum number of permitted antennas (71) authorized at the site by Conditional Use Authorization Motion No. 17964. The impact of the 71 antennas was considered with the previous application and included a report evaluating the cumulative RF emissions that would be generated by all 71 antennas on the tower.¹ The report concludes that the proposed and existing wireless telecommunications facilities comply with the prevailing FCC-adopted health and safety standards limiting human exposure to RF energy, and would not for this reason cause a significant effect on the environment. Therefore, the impacts of the project would not aggregate under CEQA to a degree where the project, by itself, would have cumulative impacts.

APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

The concerns raised in the August 2, 2010 Appeal Letter are cited in a summary below and are followed by the Department's responses.

Issue 1:

Clearwire's multi-site linkage via wireless line-of-sight microwave point-to-point backhaul requires an evaluation of Clearwire's San Francisco network in its entirety for any potential significant environmental impacts prior to approvals of individual base stations and/or backhaul nodes.

Response 1:

All wireless networks within a given area are linked through what is commonly referred to as a backhaul network. Most wireless carriers (e.g. AT&T, T-mobile, Sprint, etc.) link most of their networks through landline telephone or fiber networks. Clearwire links their network through a point-to-point microwave network, in lieu of a landline option. To require Clearwire to perform a CEQA evaluation of its entire network prior to individual site approval simply because of the point to point nature of its backhaul system would be arbitrary and would subject Clearwire to greater cost and administrative burden than the other wireless carriers for no good reason.

In addition, in 1996 the Federal Government passed the Telecom Act, requiring the FCC to adopt a nationwide human exposure standard which would ensure that the facilities it licensed did not have a cumulative impact on human health or the environment. The FCC developed these standards for exposure to RF energy. In San Francisco, the Planning Department adopted the local *Wireless Telecommunications Services Facilities Siting Guidelines*, which require wireless facilities to evaluate RF exposure both before and after installation. In sum, the FCC provides the

¹ Statement by the Consulting Engineers of Hammett & Edison, Inc., March 30, 2008. This document is available for review at the Planning Department, 1650 Mission Street, Suite 400, San Francisco, CA as part of Case File No. 2008.1157C.

standard but the local Wireless Guidelines enforces this standard by requiring an exposure evaluation both before and after installation.

The existing facility on the site and the proposed antennas comply with FCC requirements. An April 16, 2010 report by Hammett & Edison, Inc., Consulting Engineers evaluated the relay station for compliance with appropriate guidelines limiting human exposure to radio frequency (RF) electromagnetic fields. These antennas would be located 54-58 feet above ground. The report stated that for any person anywhere at ground level, the maximum ambient RF exposure level due to the proposed relay operation by itself would be 0.0012 percent of the applicable public exposure limit. Ambient RF levels at the site are estimated to be less than one percent of the most restrictive public exposure limit. Due to their mounting locations the antennas would not be accessible to the general public and there are no structures of comparable height in the immediate vicinity. The public exposure limit is calculated to extend up to 10 feet out from the antennas. This does not reach any publicly accessible areas. The proposed project would be a minor addition to the existing facilities. The existing facilities have not been shown to cause any environmental effect, and the proposed project would not be expected to cause any new environmental effect. The Appellant has not identified other projects that have resulted in a particular cumulative impact. The Appellant has not identified a cumulative impact and has not explained how this project would contribute to a cumulative impact in a considerable way.

Issue 2:

Clearwire utilizes wireless point-to-point line-of-sight microwave backhaul to interconnect its network of base stations. Should these point-to-point microwave dishes lose alignment due to an earthquake or other damage to the structures to which they are attached, these highly directional beams may result in members of the public being exposed to radiation levels in excess of FCC exposure guidelines.

Response 2:

Based on its location within San Francisco, it is likely that the site would experience periodic minor earthquakes and potentially a major (moment magnitude [Mw] greater than 7.1 characteristic earthquake on one or more of the nearby faults during the life of the proposed project. The project site is not within an Earthquake Fault Zone as defined by the Alquist-Priolo Earthquake Fault Zoning Act. No known fault or potentially active fault exists on the project site. The *Community Safety Element* of the San Francisco General Plan contains maps that indicate areas of the City where one or more geologic hazards exist. The project site is in a Seismic Hazard Study Zone designated by the California Division of Mines and Geology as an area subject to "objects fall." It is also in an area of potential landslide hazard. The telecommunications tower was built to building Code standards and is maintained by American Tower Corporation. The existing baseline condition at the site is the existing tower. The addition of five antennas does not change the presence of the tower. If the proposed antennas lose alignment the public exposure limit of ten feet would remain unchanged.

CONCLUSION

For the reasons stated above categorical exemption complies with the requirements of CEQA. The Department therefore recommends that the Board uphold the Determination of Exemption from Environmental Review and deny the appeal of the CEQA Determination.

ATTACHMENTS

**Document is available
at the Clerk's Office
Room 244, City Hall**

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