



SAN FRANCISCO PLANNING DEPARTMENT

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- Downtown Park Fee (Sec. 139)
- Market & Octavia Fee(s) (Sec. 326)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 314)
- Other

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Planning Commission Motion No. 18145

HEARING DATE: JULY 15, 2010

Date: July 8, 2010
Case No.: **2010.0265**
Project Address: **2601 Mission**
Zoning: Mission Street Neighborhood Commercial Transit District
 40-X/65-B Height and Bulk District
Block/Lot: 3637/069
Project Sponsor: Clearwire
 182 2nd Street Suite 210
 San Francisco CA 95105
Staff Contact: Diego R Sánchez – (415) 575-9082
 diego.sanchez@sfgov.org

ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 736.83 OF THE PLANNING CODE TO ALLOW THE INSTALLATION OF THREE PANEL ANTENNAS, ONE GPS ANTENNA AND ASSOCIATED EQUIPMENT CABINETS ON THE ROOF OF A TEN-STORY COMMERCIAL BUILDING WITHIN THE MISSION NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT AND A 40-X/65-B HEIGHT AND BULK DISTRICT.

PREAMBLE

On April 15, 2010, Joyce Chu, on behalf of Modus (hereinafter "Applicant"), agent for Clearwire (hereinafter "Project Sponsor") made application (hereinafter "Application"), for Conditional Use Authorization on the property at **2601 Mission, Lot 069 in Assessor's Block 3637**, (hereinafter "Project Site") to mount a total of three panel antennas, one GPS antenna and related equipment on the roof of a ten-story wholly commercial building, as part of Clearwire's telecommunications network in general conformity with plans dated April 14, 2010 and labeled "Exhibit B" (hereinafter "Project") within a Mission Neighborhood Commercial Transit District and a 40-X/65-B 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.

On July 15, 2010 the Commission conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2010.0265C.

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 requested in Application No. 2010.0265C, 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 is located at the southeast corner of Mission and 22nd Streets. The project site is a ten story commercial bank building, commonly known as the 'US Bank Building'. Since 2000, there have been four Conditional Use authorizations granted for the installation or relocation of multiple wireless telecommunications facilities at the site. The last case, in 2005, authorized the installation of four antennas.
3. **Surrounding Properties and Neighborhood.** The Project Site is located within the Mission neighborhood. Land uses in the immediate project vicinity are primarily neighborhood serving retail and residential. Adjacent zoning districts include the Mission NCT (Mission Street Neighborhood Commercial Transit), RTO-M (Residential Transit Oriented - Mission), NC-1 (Neighborhood Commercial Cluster) and P (Public) districts.
4. **Project Description.** The proposal is to install three panel antennas, one GPS antenna and associated equipment cabinets as part of a wireless transmission network operated by Clearwire on a Location Preference 2 (Co- Location Site) according to the Wireless Telecommunications Services (WTS) Siting Guidelines. The proposal will provide 4G coverage in an area that lacks this service. Each antenna measures approximately 42" high by 12.7" wide by 2.8" thick. The antennas would be mounted to existing rooftop mechanical equipment rooms at a height of approximately 130 feet above grade. The project site is within the Mission Street Neighborhood Commercial Transit District and a 40-X/65-B Height and Bulk District.
5. **Public Comment.** The Department has received two telephone calls from the public enquiring about the proposal. Those calls were focused on the approval process and the health issues related to the proposal.

6. **Planning Code Compliance.** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Use.** Planning Code Section 736.83 requires Conditional Use authorization for wireless telecommunication facilities within the Mission Neighborhood Commercial Transit District.

The project is proposing a wireless transmission facility and is requesting Conditional Use authorization.

- B. **WTS Guidelines.** The WTS Guidelines identify different types of buildings for the siting of wireless transmission facilities, with Location Preference 1 being the most desirable location and Location Preference 7 being the least desirable location

The proposal qualifies as a Location Preference #2, Co-Location site and as such is a preferred site.

7. **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. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.

This geographic area lacks coverage for the 4G service. The proposed new facility will add 4G service, according to the existing and proposed coverage maps as provided by the Applicant.

The proposed project would be generally desirable and compatible with the surrounding neighborhood in that the project will not conflict with the existing uses of the property and will be of such size and nature to be compatible with the surrounding mixed-use and nature of the vicinity. The approval of this authorization has been found to enhance public safety, and insures that the placement of antennas and related equipment are so located, designed, and treated architecturally to minimize their visibility from public places, to avoid intrusion into public vistas, avoid disruption of the architectural design integrity of buildings and insure harmony with neighborhood character.

- B. That such use or feature as proposed will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:

- i. The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

An evaluation of potential health effects from RF radiation, conducted by the Department of Public Health, has concluded that the proposed wireless transmission facility and cumulative effects of the existing facility are in compliance with the FCC-adopted health and safety standards.

- 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. The facility is an unmanned operation, with a single maintenance crew visiting the site once a month.

- 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 installation of the antennas and 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 installation of antennas on existing mechanical equipment penthouse will not affect the existing landscaping, open spaces, parking and loading areas, service areas or signs.

- 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.

- 8. **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 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 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.

VISITOR TRADE

OBJECTIVE 8 - ENHANCE SAN FRANCISCO'S POSITION AS A NATIONAL CENTER FOR CONVENTIONS AND VISITOR TRADE.

POLICY 8.3 - Assure that areas of particular visitor attraction are provided with adequate public services for both residents and visitors.

The Project will ensure that residents and visitors have adequate public service in the form of 4G mobile telecommunication services.

COMMUNITY SAFETY

EMERGENCY PREPAREDNESS & RESPONSE

OBJECTIVE 3 - ENSURE THE PROTECTION OF LIFE AND PROPERTY FROM DISASTERS THROUGH EFFECTIVE EMERGENCY RESPONSE. PROVIDE PUBLIC EDUCATION AND TRAINING ABOUT EARTHQUAKES AND OTHER NATURAL DISASTERS AND HOW INDIVIDUALS, BUSINESSES AND COMMUNITIES CAN REDUCE THE IMPACTS OF DISASTERS.

POLICY 3.1 - Promote greater public awareness of disaster risks, personal and business risk reduction, and personal and neighborhood emergency response.

Wireless telecommunications service is proven to provide critical service in the event of natural disasters or other life threatening emergency situations to residents, visitors, and emergency responders.

9. **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.

The proposal will have no effect upon the neighborhood serving retail as the proposal is a wireless transmitting facility mounted on rooftop mechanical equipment.

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

The Project does not remove any existing housing. The Project's uses, size, scale, and design are consistent with the surrounding neighborhood.

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

Affordable housing is not affected by this Project.

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

Public transportation service will not be affected by this Project nor will it have any significant impact on neighboring streets or neighborhood parking.

- 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 does not propose commercial office development.

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

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the Building Code.

- G. That landmarks and historic buildings be preserved.

The proposal will not adversely affect any landmarked or historic buildings.

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

There will be no significant impact on parks or open space and their access to sunlight nor there any significant impact on parks or open space vistas.

- 10. 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.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2010.0265C** subject to the following conditions attached hereto as "EXHIBIT A" which is incorporated herein by reference as though fully set forth.

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. 18145. 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 Planning Commission ADOPTED the foregoing Motion on July 15, 2010.

Linda Avery
Commission Secretary

AYES: Commissioners Antonini, Lee, Miguel, Moore Olague and Sugaya

NAYS: None

ABSENT: Commissioner Borden

ADOPTED: July 15, 2010

Exhibit A

Conditions of Approval

GENERAL CONDITIONS

1. This authorization is for a Conditional Use Authorization under Planning Code Sections 303 and 736.83 to allow Clearwire to install a wireless transmission facility with three panel antennas, a GPS antenna and equipment cabinets on the roof of a commercial building, where a T-Mobile wireless facility and related equipment already exist, within the Mission Neighborhood Commercial Transit District and a 40-X/65-B Height and Bulk District, in general conformance with plans filed with the Application dated April 14, 2010, stamped "EXHIBIT B" and modified by the following conditions, included in the docket for Case No. 2010.0265C, reviewed and approved by the Commission on July 15, 2010.
2. **Plan Drawings.** 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 describe:
 - 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.
3. **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. The Project Implementation Report shall 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 weekday with the subject equipment measured while operating at maximum power.
 - d. **Testing, Monitoring, and Preparation.** The Project Implementation Report shall be prepared by a certified professional engineer or other technical expert approved by the

- 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:
 - c. Antennas and back-up equipment shall be painted, fenced, landscaped or otherwise treated architecturally so as to minimize visual impacts;
 - d. Rooftop installations shall be setback such that back-up facilities are not viewed from the street;
 - e. Antennae attached to building facades shall be so placed, screened or otherwise treated to minimize any negative visual impact; and
 - f. 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.
8. **Out of Service.** The Project Sponsor or Property Owner shall remove antennae and equipment that has been out of service for a continuous period of six months or otherwise abandoned.
9. **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.
10. **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.
11. **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 any heating/cooling facility, shall not be operated so as to cause the generation of heat that adversely affects a building occupant.
12. **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.
13. **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 803(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.
14. 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.
15. **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 City 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 complains to the Commission for consideration at the next regularly scheduled public meeting.
16. **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.
17. **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.
18. **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.

19. **Notice of Recordation.** Prior to the issuance of any building permit for the construction of the Project, the Zoning Administrator shall approve and order the recordation of a notice in the Official Records of the Recorder of the City and County of San Francisco, which notice shall state that construction of the Project has been authorized by and is subject to the conditions of this Motion. From time to time after the recordation of such notice, at the request of the Project Sponsor, the Zoning Administrator shall affirm in writing the extent to which the conditions of this Motion have been satisfied, and record said writing if requested.
20. Violation of the conditions contained in this Motion or of any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$500 a day in accordance with Planning Code Section 176.
21. Should monitoring of the Conditions of Approval contained in Exhibit A of this Motion be required, the Project Sponsor or successors shall pay fees as established in Planning Code Section 351(e)(1).
22. The authorization and right vested by virtue of this action shall be deemed void and canceled if, within 3 years of the date of this Motion, a site permit or building permit for the Project has not been secured by Project Sponsor. This authorization may be extended at the discretion of the Zoning Administrator only if the failure to issue a permit by the Department of Building Inspection is delayed by a city, state, or federal agency or by appeal of the issuance of such permit.