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VIA EMAIL (epearson@cityofdhs.org)

Planning Commission
City of Desert Hot Springs
11711 West Drive
Desert Hot Springs, CA 92240

Re: AT&T Proposed Wireless Communications Facility; Site ID CSL03927
Conditional Use Permit No. 02-19, Cell Tower at 22755 Palm Drive

Dear Chair Buchanan and Commissioners Aragon, Duffle and Nindel:

I write on behalf of New Cingular Wireless PCS, LLC dba AT&T Mobility (AT&T) in support of AT&T's application to install a wireless communications facility at 22755 Palm Drive ("Proposed Facility"). This project was supported by Planning Staff and is consistent with the Municipal Code and General Plan of the City of Desert Hot Springs ("City"). The Staff Report dated June 11, 2019 ("Staff Report") provided a positive review of the location and facility, and also required concealment measures that included a mono-palm cell tower design, the planting of palm trees at least 20 feet high, and a 6-foot-high block wall. I understand that the Planning Commission requested a different design and that design-related discussions between Planning Staff and AT&T are continuing. I do not intend to comment on those discussions. Instead, the purpose of this letter is to respond to a letter dated July 31, 2019 from an attorney for SBA 2012 TC Assets, LLC ("SBA"), which objects to the Proposed Facility. Except for SBA's specific objections to the design, which may be moot, each point raised by SBA is addressed below.

1. Telecommunications Facilities Are Conditionally Permitted In All Commercial Zones

SBA first argues that telecommunications facilities are not allowed in a Commercial Retail (C-R) zoning district. This argument wrongly presumes that the Zoning Ordinance prescribes any rules for a C-R zoning district. It does not, as shown by the omission of a C-R zoning district from the list of established land use zoning districts in Section 17.04.060 of the Zoning Ordinance. The omission is unsurprising. None of the land that was initially zoned by the County of Riverside and then annexed by the City was later rezoned to match City zoning districts.¹ The Planning Staff treated the C-R zoning district like the C-G (General Commercial) zoning district (see Staff Report, p. 2 (applying the setbacks applicable to the C-G zoning district to the Proposed Facility)) and AT&T has no objection to that approach. The only alternative would be to treat the C-R zoning district as if it had no zoning rules at all, which would allow AT&T to build the Proposed Facility without obtaining a Conditional Use Permit ("CUP"). AT&T is not arguing for that outcome and, presumably, neither is SBA.

SBA next argues that "nothing in the zoning code specifically allows telecommunications facilities generally, or cell towers in particular." This argument is incorrect. Each established Commercial zoning district allows the City to grant a CUP for telecommunications facilities. (Zoning Ordinance, Section 17.12.020, Table 17.12.01). Granting a CUP for the Commercial C-R zoning district is plainly consistent with these provisions.

Moreover, Section 17.12.020 does not purport to list every possible use. To the contrary, it states that "[i]t is not expected that the range of uses set forth [in Table 17.12.01] is all inclusive. Cases of uncertainty regarding whether a particular land use is

¹ The C-R zoning district is one of several zoning districts that the County had previously established for land that the City annexed effective September 12, 2010. As noted in a Report to City Council dated March 3, 2009, state law required the City to leave the County zoning districts in place for at least two years after the effective date of the annexation. Although the City Council approved changes to the City Land Use Map that were intended to go into effect after the two-year period was over (see Minutes of December 7, 2010 Council Meeting), those changes never went into effect because the City did not adopt the required General Plan Update. If those changes had gone into effect, then the land where the Proposed Facility is located would have been rezoned as a Commercial district.

permitted and by what process, shall be determined by the Director.” (Zoning Ordinance, Section 17.12.020, Table 17.12.01). The City, therefore, would be authorized to allow telecommunications facilities to be built even if the Zoning Code did not specifically provide for them (although it does).

***2. The Planning Staff Correctly Concluded That The Proposed Facility
Will Not Have Adverse Consequences On The Neighborhood***

SBA argues that the Proposed Facility will have an adverse effect on what it describes as “a featureless desert area” that is 200 feet from Palm Drive, 1000 feet from the I-10 freeway, and less than 1000 feet away from SBA’s 103-foot tower in Cathedral City. SBA complains that a mono-palm design will not “flex with the wind” like a real palm tree, and will not fool passersby “into believing that it is actually a palm tree.” But it is unnecessary to require the Proposed Facility to be disguised to this degree. It will not be in a residential area; it will be located near a gas station, highway and existing cell tower. Given the location of the Proposed Facility, the Planning Staff correctly concluded that “[t]he proposed use will not introduce any activities that would impair the integrity or character of the land use district in which it is to be located.”

SBA’s argument is particularly meritless because its own telecommunications tower, which is only 939 feet from the location of the Proposed Facility, includes no concealment features whatsoever. It is frankly astonishing that SBA would complain about AT&T’s proposed designs when it does not believe it necessary to disguise its own cell tower at all. The Commission should summarily reject SBA’s design-based objections.

***3. The Zoning Ordinance Does Not Need To Specify
A Particular Design, Such As A Clock Tower***

SBA argues that the Zoning Ordinance does not specifically allow a 75-foot tall clock tower, whether by means of a CUP or otherwise. But as noted above, the Zoning Ordinance states that it does not identify every potential use. And SBA does not cite any provision of state law that would require the Zoning Ordinance to list every potential use. Nor could it

do so, since the City's status as a charter city gives it substantial authority over zoning and land use decisions notwithstanding state laws to the contrary. *See generally Sacramentans for Fair Planning v. City of Sacramento*, 37 Cal. App. 5th 698 (3rd App. Dist. July 3, 2019).

4. The Planning Staff Correctly Concluded That The Proposed Facility Is Needed, A Conclusion That Is Reinforced By The Attached Analysis

SBA argues that the Proposed Facility is not needed because AT&T can lease space on SBA's cell tower. Respectfully, AT&T has no interest in being forced into doing business with SBA, and it expects that the Commission will not allow itself to be used in this manner.

Nor is it correct to argue, as SBA does, that the General Plan requires the City to reduce the unnecessary proliferation of telecommunications towers in the community. As an initial matter, that concern is inapplicable here because SBA chose to build its cell tower in Cathedral City, not in Desert Hot Springs. More importantly, the General Plan does not make such a categorical statement. Instead, the General Plan simply notes the increasing use of fiber optic cabling—which can carry high quality video, audio and data—and then states: "The City has a responsibility to monitor this new technology, regulate the rush anticipated of multiple providers, and plan for its installation and the needs of City residents."

This directive to "plan for ... the needs of City residents" supports the City's approval of AT&T's application. Similarly, Goal 1 of the General Plan's Water, Sewer and Utilities Goals requires the City to obtain "[e]conomical water, sewer and utility facilities and services, which safely and adequately meet the needs of the City at build out." Based on the evidence before it, the Planning Staff found that AT&T's "proposed cell tower would service the growing community of developments and business in the area and would improve service to the existing commercial businesses, relieve some of the airwave traffic from the towers, and provide emergency coverage/911 coverage to areas that have poor coverage." (Staff Report, p. 3.) The Proposed Facility is consistent with the General Plan and will unequivocally help the City meet Goal 1. The General Plan therefore favors granting AT&T's application.

Indeed, the Proposed Facility is part of AT&T's commitment to supporting public safety through its partnership with FirstNet, the federal First Responder Network Authority. The Proposed Facility will provide new service on Band 14, which is the dedicated public safety network for first responders nationwide by providing critical wireless services over AT&T's LTE network. Deployment of FirstNet in this area will improve public safety by providing advanced communications capabilities to assist public safety agencies and first responders.

The need for the Proposed Facility is further supported by AT&T's substantial evidence of need. AT&T's radio frequency engineers identified a significant gap in LTE service coverage this portion of the City. AT&T's gap is depicted in Exhibit 1 to the attached Radio Frequency Statement. As you can see, this service coverage gap will cover a large area along and surrounding Interstate 10. In fact, according to Caltrans traffic data, this portion of the Interstate sees approximately 8,000 vehicles in each direction during peak hours. The Proposed Facility will eliminate this gap, as depicted in Exhibit 2 to the Radio Frequency Statement. Denial or delay of AT&T's application will materially inhibit its ability to provide needed wireless service here. Moreover, AT&T's coverage maps show that this is not merely some effort to "overbuild" as SBA would have you believe. AT&T has a serious need to augment its service coverage in Desert Hot Springs. In contrast to SBA's consultant's attempt to model and depict AT&T's service coverage using "cellular industry typical LTE operating parameters ... for omnidirectional antennas," AT&T's Radio Frequency Engineers rely on complex tools and databases to model signal propagation using AT&T's actual wireless network parameters in the context of existing terrain and clutter variations (see Radio Frequency Statement at page 2). Further, as you can see in AT&T's construction drawings submitted with its application, AT&T is not deploying omnidirectional antennas as SBA's consultant modeled. Consistent with Staff's findings, AT&T's Radio Frequency Statement tells the real story of the very real need for the Proposed Facility.

***5. The Planning Staff Correctly Concluded That
The Proposed Facility Complies With CEQA***

SBA argues that the proposed facility does not fall within the Class 3 exemption. They cite to *California Farm Bureau v. California Wildlife Federation Board*, a 2006 case and *Myers v. Board of Supervisors* a 1976 case, neither of which address wireless facilities and neither of which relate to the Class 3 exemption – thus, neither provide any guidance on any issue relevant. However, many cases analyze the Class 3 exemption and several recent cases apply the Class 3 exemption to wireless facilities.

The wireless facility at issue falls within the Class 3 categorical exemption under the CEQA Guidelines, which applies to the construction, installation, or conversion of a limited number of small facilities, structures or equipment. 14 California Code of Regulations § 15303(d). In *Robinson v. City and County of San Francisco* (2012) 208 Cal.App.4th 950, the court concluded that installation of numerous wireless communications facilities, each with antennas and equipment affixed to a utility pole and associated trenching, qualified for this CEQA exemption. Noting that this CEQA exemption has been applied to exempt construction of a 2,700-square-foot house and a 1,500-square-foot addition to a commercial structure, the court explained that wireless communications facilities “fit squarely within the ambit of Class 3 exemptions.” *Id.* at 956. In *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012 the court held that installation of 726 above ground telecommunications cabinets and associated trenching throughout San Francisco was also exempt under Class 3.

Don't Cell Our Parks v. City of San Diego, 21 Cal. App. 5th 338, affirms that the Class 3 exemption applies to new wireless poles such as the proposed facility. The Court's discussion is short and straightforward:

“Here, applying the plain language of Guidelines section 15303, the Project consists of the construction and location of a new small facility or structure, which qualifies for a Class 3 exemption. The Projection is a new small facility that will be 534 square feet, including the above-ground branch diameter of the faux tree. While none of the

examples of the exemption are directly applicable (ante, fn. 9), the Project is much smaller than a single-family residence, store, motel, office or restaurant. Accordingly, we hold that as a matter of law, the Project falls within the scope of the Class 3 categorical exemptions under the Guidelines."

The court disagreed the site that was within a park constituted an "unusual circumstance," and noted that the City had allowed other similar facilities in parks and found the site would not cause a significant environmental impact. The court found that the size of the disturbed area was minimal and that and noise generated from the cooling systems was insignificant. Under *Don't Cell Our Parks*, it is clear that the proposed facility falls within the Class 3 categorical exemption.

Counter to SBA's citations to irrelevant case law regarding offsite mitigation for fish habitat impacts and remediation of leaking toxic contamination from a landfill, in *Don't Cell Our Parks* a biological resource report documented that "[n]o special status species were identified on-site, but because the coastal California gnatcatcher is within the study area, the report recommended that construction of the Project not occur during certain time periods to avoid construction noise impacting the breeding season of these birds." The court found that compliance with these conditions did not constitute mitigation prohibiting use of an exemption, consistent with existing case law, e.g., *Walters, et. al v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 823-824, Association for Protection for Environmental Values in *Ukiah v. City of Ukiah* (1991) 2 Cal.App.4th 720, 734-6. Thus, the proposed facility is likewise not exempt because of the stealth design. Moreover, revising the design of the tower is not mitigation at all – it is a project design feature that is not mitigation. Lastly, design review alone does not trigger CEQA. *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 242 Cal.Rptr.3d 379.

SBA's arguments regarding Accessory Use are entirely irrelevant as that is not the applicable subsection of the Class 3 exemption that is most applicable, and the list is exemplarily and not exhaustive. Section "(d) Water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction" is more relevant and has been discussed in case law. Moreover, other

structures not in the example list have been upheld in case law as falling within the Class 3 exemption, as was noted by the court in *Robinson*. See *Robinson* at 956.

Lastly, as to the exceptions to the exemptions, SBA argues that the design of the wireless facility is mitigation for the aesthetic impacts and they raise impacts to scenic vistas along the I-10 freeway. Under 15300.2(d), the only exception to the exemption is for scenic resources is for officially designated state scenic highways. There are no officially designated state scenic highways in the area, therefore, there is no scenic resource for which the exception could be triggered.

Conclusion

AT&T appreciates the City's willingness to work together to reach a resolution that is in the interests of both parties as well as the citizens of Desert Hot Springs. If you have questions or if I can provide you with any additional information, please let me know.

Sincerely,

/s/ Ann Ahrens Beck

Ann Ahrens Beck

AT&T Mobility Radio Frequency Statement
22755 Palm Drive, Desert Hot Springs, CA

AT&T has experienced an unprecedented increase in mobile data use on its network since the release of the iPhone in 2007. AT&T estimates that since introduction of the iPhone in 2007, mobile data usage has increased 470,000% on its network. AT&T forecasts its customers' growing demand for mobile data services to continue. The increased volume of data travels to and from customers' wireless devices and AT&T's wireless infrastructure over limited airwaves — radio frequency spectrum that AT&T licenses from the Federal Communications Commission.

Spectrum is a finite resource and there are a limited number of airwaves capable and available for commercial use. Wireless carriers license those airwaves from the FCC. To ensure that service quality, AT&T must knit together its spectrum assets to address customers' existing usage and forecasted demand for wireless services, and it must use its limited spectrum in an efficient manner.

AT&T uses high-band (i.e., 2300 MHz, 2100 MHz, and 1900 MHz) and low-band (i.e., 850 MHz and 700 MHz) spectrum to provide wireless service. Each spectrum band has different propagation characteristics and signal quality may vary due to noise or interference based on network characteristics at a given location. To address this dynamic environment, AT&T deploys multiple layers of its licensed spectrum and strives to bring its facilities closer to the customer. The proposed wireless communications facility at 22755 Palm Drive, Desert Hot Springs, CA (the "Property") is needed to close a coverage gap in LTE service in a large area surrounding the Interstate-10 interchange with Palm Drive and Gene Autry Trail. According to Caltrans traffic data, approximately 8,000 vehicles travel this highway in each direction during each peak traffic hour.

The service coverage gap is caused by inadequate infrastructure in the area. AT&T currently has existing sites in the broader geographical area surrounding the Property but, as Exhibit 1 illustrates, these existing sites do not provide sufficient LTE service in the gap area. To meet its coverage objectives, AT&T needs to construct a new wireless communications facility. Denial of this proposed facility would materially inhibit AT&T's ability to provide and improve wireless services in this area.

The facility at the Property will help to close the gap in coverage and help address rapidly increasing data usage driven by smart phone and tablet usage. This site is part of an effort to fully deploy 4G LTE technology in the area. Specifically, the proposed facility will close this service coverage gap and provide sufficient 4G LTE coverage for AT&T customers in the affected area. 4G LTE is capable of delivering speeds up to 10 times faster than industry-average 3G speeds. LTE technology also offers lower latency, or the processing time it takes to move data through a network, such as how long it takes to

start downloading a webpage or file once you've sent the request. Lower latency helps to improve the quality of personal wireless services. What's more, LTE uses spectrum more efficiently than other technologies, creating more space to carry data traffic and services and to deliver a better overall network experience.

It is important to understand that service problems can and do occur for customers even in locations where the coverage maps on AT&T's "Coverage Viewer" website appear to indicate that coverage is available. As the legend to the Coverage Viewer maps indicates, these maps display approximate coverage. Actual coverage in an area may differ from the website map graphics, and it may be affected by such things as terrain, weather, network changes, foliage, buildings, construction, high-usage periods, customer equipment, and other factors.

It is also important to note that the signal losses, slow data rates, and other service problems can and do occur for customers even at times when certain other customers in the same vicinity may not experience any problems on AT&T's network. These problems can and do occur even when certain customers' wireless phones indicate coverage bars of signal strength on the handset. The bars of signal strength that individual customers can see on their wireless phones are an imprecise and slow-to-update estimate of service quality. In other words, a customer's wireless phone can show coverage bars of signal strength, but that customer will still, at times, be unable to initiate voice calls, complete calls, or download data reliably and without service interruptions due to service quality issues.

To determine where equipment needs to be located for the provisioning of reliable service in any area, AT&T's radio frequency engineers rely on far more complex tools and data sources than just signal strength from individual phones. AT&T uses industry standard propagation tools to identify the areas in its network where signal strength is too weak to provide reliable in-building service quality. This information is developed from many sources including terrain and clutter databases, which simulate the environment, and propagation models that simulate signal propagation in the presence of terrain and clutter variation. AT&T designs and builds its wireless network to ensure customers receive reliable in-building service quality. In-building service is critical as customers increasingly use their mobile phones as their primary communication device (more than 72% of American households rely primarily or exclusively on wireless telecommunications) and rely on their mobile phones to do more (E911, GPS, web access, text, etc.). In fact, the FCC estimates that 70% of 911 calls are placed by people using wireless phones.

The proposed facility at the Property is also a part of AT&T's commitment to supporting public safety through its partnership with FirstNet, the federal First Responder Network Authority. The proposed facility will provide new service on Band 14, which is the dedicated public safety network for first

responders nationwide. The proposed facility is designed to be part of FirstNet and will provide coverage and capacity for the deployment of the FirstNet platform on AT&T's LTE network. Deployment of FirstNet in the subject area will improve public safety by providing advanced communications capabilities to assist public safety agencies and first responders.

Exhibit 1 to this Statement is a map of the existing LTE service coverage (without the proposed installation at the Property) in the area at issue. It includes LTE service coverage provided by other existing AT&T sites. The green shading shows areas within a signal strength range that provide reliable service coverage. The yellow shaded areas depict areas within a signal strength range that provide marginally reliable service coverage. The pink and white areas depict areas in which a customer might have difficulty receiving a consistently acceptable level of service. The quality of service experienced by any individual customer can differ greatly depending on whether that customer is indoors, outdoors, stationary, or in transit. Any area in the pink or white category is considered inadequate service coverage and constitutes a service coverage gap.

Exhibit 2 is a map that predicts LTE service coverage based on signal strength in the vicinity of the Property if the proposed facility is constructed as proposed in the application. As shown by this map, constructing the proposed facility at the Property closes this significant service coverage gap.

My conclusions are based on my knowledge of the Property and with AT&T's wireless network, as well as my review of AT&T's records with respect to the Property and its wireless telecommunications facilities in the surrounding area. I have a Bachelor Degree in Electronics and Communications from the Saint Louis University, and have worked as an engineering expert in the wireless communications industry for more than 20 years.



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LTE Coverage Before Site CSL03927



