CITY OF NEWPORT BEACH PLANNING DEPARTMENT ACTION REPORT

TO:

CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM:

David Lepo, Planning Director

SUBJECT:

Report of actions taken by the Zoning Administrator, Planning Director and/or

Planning Department staff for the week ending June 5, 2009

ACTIONS TAKEN BY THE PLANNING DIRECTOR OR PLANNING DEPARMENT STAFF

Item 1:

MediaFLO USA - Telecom Permit No. TP2008-003 (PA2008-117)

21474 Vista Ridge Road

A telecom permit to allow the installation of a 14-foot pylon antenna to be mounted at 47 feet on the existing 100-foot steel lattice tower located atop "Signal Peak", two 1.8-meter satellite dishes to be side mounted on the existing equipment shelter, two global positioning system antennas mounted on the existing equipment shelter, one heat exchanger to be wall mounted on the existing equipment shelter, one air conditioning unit to be wall mounted to the existing equipment shelter, and related equipment housed within the existing equipment shelter.

Approved – June 4, 2009

Council District

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On behalf of David Lepo, Planning Director:

Patrick J. Alford, Planning Manager

APPEAL:

The applicant or any interested party may appeal the decision of the Planning Director to the City Council by a written request to the City Council within 14 days of the action date. A \$1,550.00 filing fee shall accompany any appeal filed. The City Council's action on appeals shall be final.

c: David Lepo, Planning Director (e-mail)
Sharon Wood, Assistant City Manager (e-mail)
David Keely, Public Works Senior Civil Engineer (e-mail)
Code Enforcement Division (e-mail)
Lt. Tom Gazsi, NBPD (e-mail)



TELECOM PERMIT NO. TP2008-003

(PA2008-117)

Planning Department 3300 Newport Boulevard Newport Beach, CA 92663 (949) 644-3200; FAX (949) 644-3229

Staff Person:

Fern Nueno 949-644-3227

APPLICATION:

Telecom Permit No. TP2008-003 (PA2008-117)

APPLICANT:

MediaFLO USA

LOCATION:

21474 Vista Ridge Road

LEGAL DESCRIPTION:

Parcel 1 of Block 134, Irvine Subdivision, in the County of Orange, State of California, as per map recorded in Book 1,

Page 88 of Miscellaneous Record Maps, in the Office of the

County Recorder of Orange County.

PROJECT REQUEST AND DESCRIPTION

MediaFLO USA has submitted an application requesting approval of a telecom permit to allow the installation of a 14-foot pylon antenna to be mounted at 47 feet on the existing 100-foot steel lattice tower located atop "Signal Peak", two 1.8-meter satellite dishes to be side mounted on the existing equipment shelter, two global positioning system antennas mounted on the existing equipment shelter, one heat exchanger to be wall mounted on the existing equipment shelter, one air conditioning unit to be wall mounted to the existing equipment shelter, and related equipment housed within the existing equipment shelter. The proposed telecommunications equipment would allow wireless subscribers to receive television broadcasts on their cellular telephones. The property is located in the Newport Coast Planned Community (NPC_PC) District.

DIRECTOR'S ACTION:

Approved with Conditions - June 4, 2009

In approving this application, the Planning Director analyzed issues regarding compliance with Chapter 15.70 of the Newport Beach Municipal Code. This approval is based on the findings and subject to the following conditions attached to this report.

The Planning Director determined in this case that the proposed wireless telecommunications facility ("telecom facility") meets the provisions of Chapter 15.70.

BACKGROUND

This subject parcel is in an area called Signal Peak, which was located within unincorporated County of Orange prior to annexation into the City, and was zoned for open space by the County. Under the County of Orange, wireless telecommunications facilities were a permitted use in the open space zone with the approval of a site development permit. There were multiple towers at Signal Peak, including the subject lattice tower, located on multiple parcels of land that received approval from the Orange County Planning and Development Services Department prior to annexation to the City.

Upon annexation to the City, the zoning of the parcel was reclassified to Newport Coast Planned Community (NPC_PC) District with a land use designation of Medium Density Residential and placed within a 32/50 Height Limitation Zone. The Medium and High Density Residential Planning Area of the NPC_PC District permits community transmitting, reception, or relay facilities. However, the zoning reclassification caused the existing lattice towers to become nonconforming per the City's Wireless Telecommunication Facilities Ordinance (Chapter 15.70 of the Municipal Code) because wireless telecommunications structures are not permitted to exceed the maximum height limit (50 feet). The existing steel lattice structure at the subject site is 100 feet in height. Thus, the structure is considered nonconforming because its height exceeds the maximum height limit. The proposed project will not increase the structure's inconsistency with the regulations of the Zoning Code because the proposed equipment will be under the height limit.

After the application was submitted, the applicant met with the Orange County Sheriff-Coroner Department (OCSD) to review the proposed project. The City's review and approval were delayed until the applicant provided documentation to the satisfaction of OCSD that the proposed use would not interfere with public safety transmissions. Once the issues were resolved, the Planning Department continued processing the application.

APPEAL PERIOD

The applicant may appeal any denial of the application or any conditions of approval to the City Council within 14 days of the date of written notification of action by the Planning Director. The City Council's action on appeals shall be final. Any appeal filed shall be accompanied by a filing fee of \$1,550.00.

On behalf of David Lepo, Planning Director

Attachments:

Vicinity Map

Findings and Conditions of Approval

Site Plan & Elevations

VICINITY MAP



21474 Vista Ridge Road

TP2008-003 (PA2008-117)

FINDINGS AND CONDITIONS OF APPROVAL

TP2008-003 (PA2008-117)

FINDINGS

- This project qualifies for an exemption from environmental review pursuant to Section 15303 (Class 3 New Construction or Conversion of Small Structures) of the Implementing Guidelines of the California Environmental Quality Act (CEQA). Class 3 exempts the installation of small new equipment and facilities in small structures. The proposed equipment will be small structures that are mounted on existing structures.
- 2. The telecommunications facility as proposed meets the intent of Chapter 15.70 of the Newport Beach Municipal Code (NBMC), while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic ocean and coastal views, and otherwise mitigating the impacts of such facilities based on the following:
 - The proposed telecom facility will not be detrimental to public health or safety because it is required to comply with the applicable rules, regulations and standards of the Federal Communications Commission and the California Public Utilities Commission.
 - The telecom facility is located on an existing structure, thereby limiting the adverse visual effects of proliferation of facilities in the City.
 - Due to the location and design of the facility at Signal Peak in Newport Coast, the impacts to scenic ocean, coastal or public views are minimized. Signal Peak is on a hill and surrounded by trees, screening it from many public views.
- 3. The telecommunications facility as proposed conforms to the technology, height, location and design standards based on the following:
 - The telecom facility approved under this permit utilizes the most efficient available technology in order to minimize the number of facility components and reduce the visual impact.
 - The antenna on the existing lattice tower approved by the permit does not exceed the maximum building height limit of 50 feet allowed in the Newport Coast Planned Community District, as specified in the Zoning Code.
 - The KU Band antennas and other equipment located on or within the existing building that is adjacent to the tower will be less than 22 feet in height above existing grade, which is below the height limit.

- The proposed telecom facility will be located in a priority location, co-locating on the same structure on a single parcel.
- The antenna will be mounted on an existing steel lattice tower and will be painted to match and blend in with the structure.
- The support equipment for the telecom facility will be placed on or within an existing structure and will be screened from public view with existing landscaping. Due to the topography of the site, the equipment structure is not visible to the public.
- The size of all proposed equipment is small compared with the existing equipment on site.

CONDITIONS

- 1. The development shall be in substantial conformance with the approved plot plan, antenna and equipment plans, and elevations, except as noted in the following conditions.
- 2. The proposed equipment on the lattice tower shall be painted to match the color of the tower.
- 3. The landscaping on the parcel shall be maintained in order to screen the equipment from public view.
- 4. Anything not specifically approved by this Telecom Permit is not permitted and must be addressed in a separate and subsequent telecom permit review.
- 5. Any future facilities proposed by other carriers to be located within 1,000 feet from the subject property shall be approved to co-locate at the same site by the property owner or authorized agent, unless otherwise approved by the Planning Director.
- 6. The telecom facility approved by this permit shall comply with all applicable rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
- 7. The telecom facility shall comply with all regulations and requirements of the Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code and National Electrical Code. All required permits shall be obtained prior to commencement of the construction.
- 8. Prior to the issuance of any building, mechanical and/or electrical permits, architectural drawings and structural design plans shall be submitted to the City of Newport Beach for review and approval by the applicable departments. A copy of this approval letter shall be incorporated into the drawings approved for the issuance of permits.

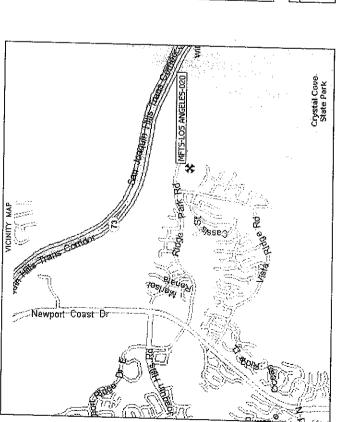
- 9. Appropriate information warning signs or plates shall be posted at the access locations and each transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates to arrange for access to the roof top area. The location of the information warning signs or plates shall be depicted on the plans submitted for building permits.
- 10. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
- 11. The facility shall transmit at a frequency range of 716 to 722 MHz, and shall not receive any transmissions. Any change or alteration to the frequency range shall require the prior review and approval of the Planning Director.
- 12. The applicant shall not prevent the City of Newport Beach from having adequate spectrum performance on the City's 800 MHz radio frequencies at any time.
- 13. Within 30 days after installation of the telecom facility, a radio frequency (RF) compliance and radiation report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the facility is operating at the approved frequency and complies with FCC standards for radiation. If the report shows that the facility does not so comply, the use of the facility shall be suspended until the facility is modified to comply and a new report has been submitted confirming such compliance.
- 14. Prior to issuance of building permits, a deposit of \$1,000 shall be paid to the City of Newport Beach. This deposit is required by the Planning Department to ensure preparation and submittal of the RF Compliance and Radiation Report, referenced in the above Condition. The deposit will be used to defray any and all fees associated with review of the report by an independent technical consultant, pursuant to Section 15.70.070 B.10 of the Telecom Ordinance. Any unused deposit fees will be refunded to the applicant upon determination of compliance with the approved frequency and FCC standards.
- 15. The applicant shall provide a "single point of contact" in its Engineering and Maintenance Departments that is monitored 24 hours per day to insure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number and e-mail address of that person shall be provided to the Planning Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility.
- 16. The applicant shall ensure that any lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply.

- 17. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the applicant, current property owner or leasing agent.
- 18. The telecom facility approved by the permit shall comply with any easements, covenants, conditions or restrictions on the underlying real property upon which the facility is located.
- 19. The telecom facility shall not be lighted except as deemed necessary by the Newport Beach Police Department for security lighting. The night lighting shall be at the lowest intensity necessary for that purpose and such lighting shall be shielded so that direct rays do not shine on nearby properties. Prior to the final of building permits, the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with this condition.
- 20. The operator of the telecom facility shall maintain the facility in a manner consistent with the original approval of the facility.
- 21. The City reserves the right and jurisdiction to review and modify any telecom permit approved pursuant to Chapter 15.70 of the Newport Beach Municipal Code, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Department of any proposal to change the height or size of the facility; increase the size, shape or number of antennas; change the facility's color or materials or location on the site; or increase the signal output or combination of signal outputs from the whole site above the FCC RF safety for humans general population or occupational exposure limits allowable maximum. Any changed circumstance shall require the operator to apply for a modification of the original telecom permit and obtain the modified telecom permit prior to implementing any change.
- 22. This telecom permit may be modified or revoked by the City Council should they determine that the facility or operator has violated any law regulating the telecom facility or has failed to comply with the requirements of Chapter 15.70 of the NBMC, or this telecom permit.
- 23. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Director by certified mail no less than 30 days prior to such action. The operator or property owner shall have 90 days from the date of abandonment or discontinuance to reactivate use of the facility, transfer the rights to use the facility to another operator, or remove the telecom facility and restore the site.

MediaFLO USA

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BG61 ROBERT FULTON DRIVE
COLUMBIA, MD 21046
(350) 817-5887 EQUIPMENT SUPPLIER: CONTACT: RICHARD SWETZER CONTACT: DAVE HALLOWELL CONTACT: CHRIS KRAFFT

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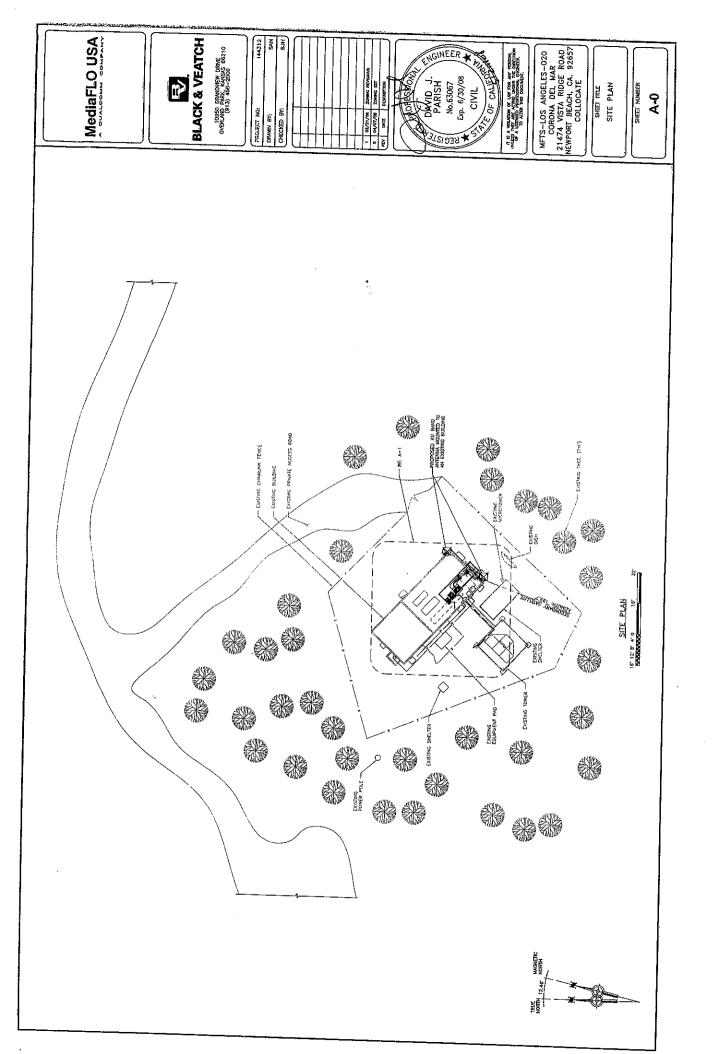
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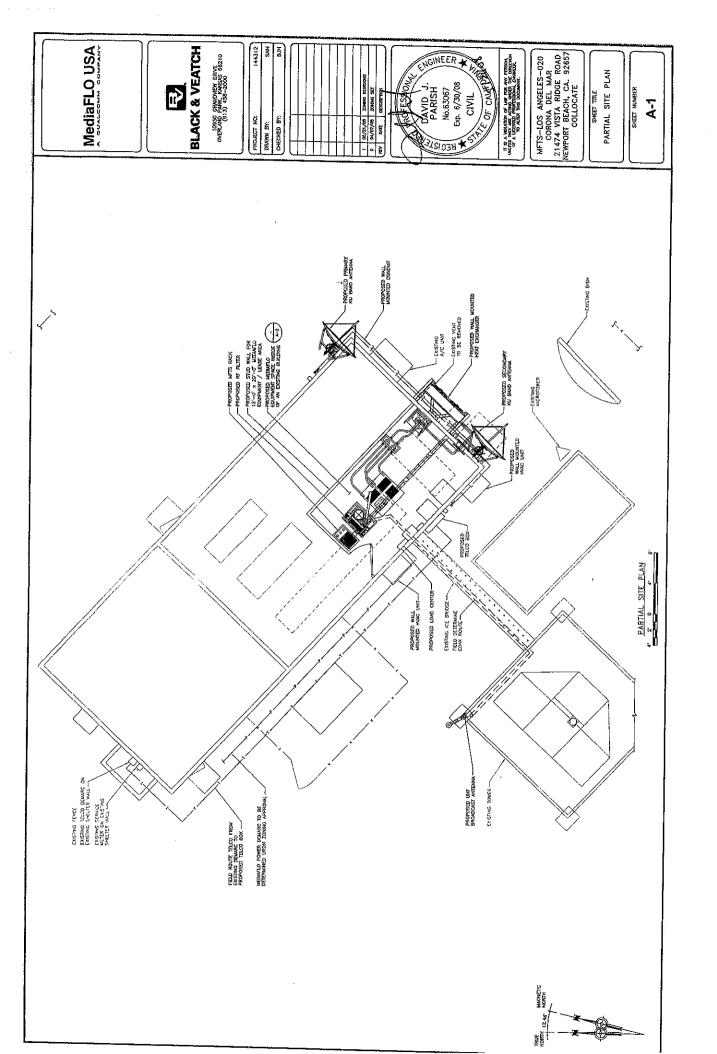
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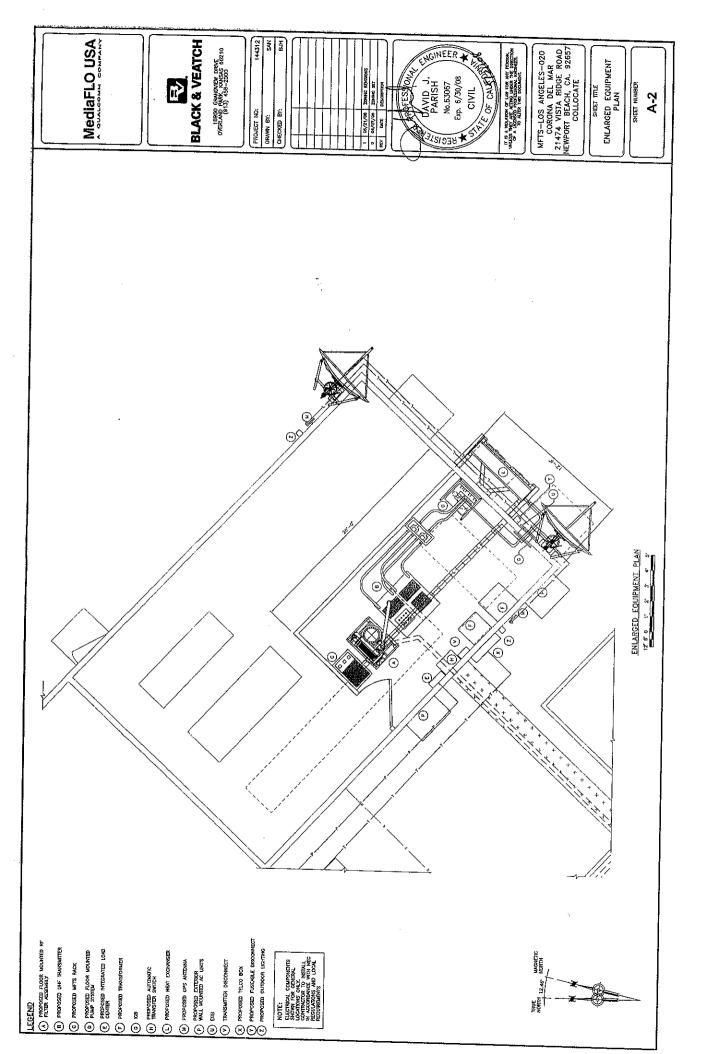
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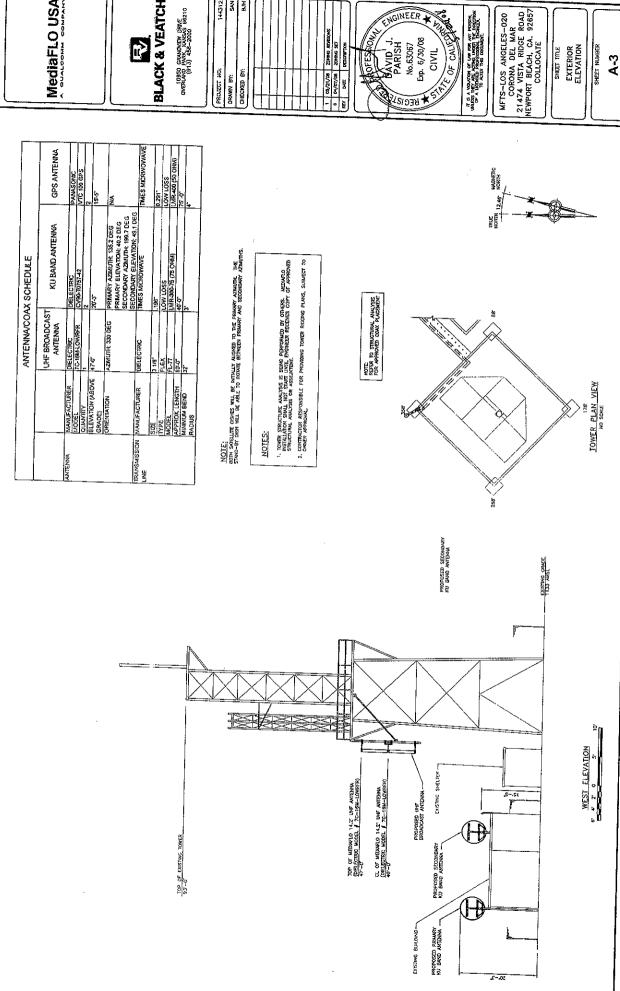
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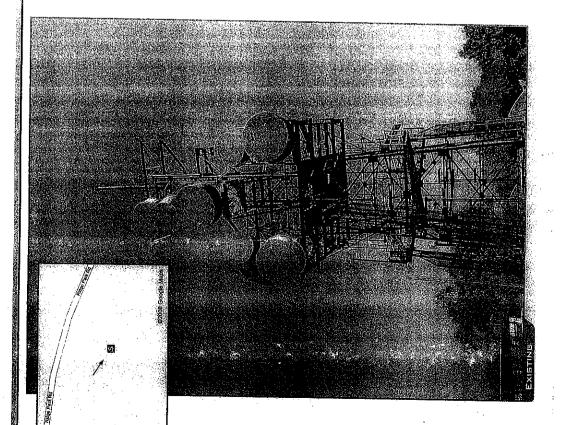
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