

Prine, Laura

From: Momsen, Richarda D.
Sent: Thursday, May 31, 2007 9:10 AM
To: Byrd, Susannah M
Cc: Lopez, Irma; Prine, Laura
Subject: RE: Regular Agenda for City Council Meeting of May 29, 2007

Sure.

From: Byrd, Susannah M
Sent: Thursday, May 31, 2007 9:10 AM
To: Momsen, Richarda D.
Cc: Gutierrez, Miriam J
Subject: RE: Regular Agenda for City Council Meeting of May 29, 2007

Thanks Richarda. Can you include the same backup but add this email to the front of the backup?
Susie

From: Momsen, Richarda D.
Sent: Thursday, May 31, 2007 9:02 AM
To: Byrd, Susannah M
Subject: RE: Regular Agenda for City Council Meeting of May 29, 2007

Rep. Byrd,

Good morning. We'll place the item on the June 4th agenda.

Richarda

From: Byrd, Susannah M
Sent: Thursday, May 31, 2007 8:59 AM
To: Mayor and Council and Staff; Momsen, Richarda D.
Cc: dcrowder@elpasotimes.com; Frank Ainsa (fain@acaciapark.com); jsrutledge@earthlink.net; Gutierrez, Miriam J
Subject: FW: Regular Agenda for City Council Meeting of May 29, 2007

Dear Mayor and Council:

Frank Ainsa, who represents Team Mobile and has been my contact on the dispute that I have with Team Mobile regarding the cell tower at 2219 Piedras, requested that we revisit the issue regarding the complaint to the cell tower so as to allow him to give Team Mobile's perspective on the issue.

In Wednesday's article Team Mobile asserted that they were not contacted about the issue. In fact, I emailed Mr. Ainsa last Thursday (see email below), emailed him again on Friday with a copy of the letter and had my office call on Friday to verify that they had received the information that I emailed. His assistant told Judy that Mr. Ainsa had received the email but that he was in depositions so she was not sure what his response would be. When he was not at Council on Tuesday, I assumed that Team Mobile had decided not to respond. Mr. Ainsa called me on Tuesday afternoon and indicated that he had been in depositions and had not had a chance to check his email until Tuesday. At that time, he requested that we not send off the letter and that I give him a chance to speak with Council regarding Team Mobile's position on this issue.

5/31/2007

It was my intention to give Team Mobile a chance to address this issue at council which is why we were so diligent in alerting Mr. Ainsa to the posted item. Because this somehow did not reach him, I will put this item on the agenda for Tuesday so that you can hear from Team Mobile.

I would still ask for your support on this issue.

Sincerely,

Susie Byrd

From: Byrd, Susannah M
Sent: Thursday, May 24, 2007 2:13 PM
To: Frank Ainsa (fain@acaciapark.com)
Subject: FW: Regular Agenda for City Council Meeting of May 29, 2007

Frank:

I just wanted to give you the heads up that I have posted this item regarding the Piedras cell tower for Tuesday's agenda (see posted item below). I will also email you the letter and the backup that I am including as part of the agenda. I can include your response to my concerns in the backup if you would like. Please let me know as I will be assembling the backup tomorrow morning.

I am asking for the mayor and council's blessing for the letter. If they disagree with me, I will just send the letter as a city representative, rather than having the mayor's signature on it.

Let me know if you have any questions.

Thanks
Susie

From: Gutierrez, Miriam J
Sent: Thu 5/24/2007 11:03 AM
To: City Clerk
Cc: McNabb, Charlie; Mayor and Council and Staff
Subject: Regular Agenda for City Council Meeting of May 29, 2007

Representative Susie Byrd is authorizing placement of the following item for Regular Agenda for City Council meeting of May 29, 2007.

Discussion and action to file a complaint with the Federal Communications Commission against Team Mobile for their failure to comply with the Nationwide Programmatic Agreement for Review of Effects on Historic Properties in the installation of a cell tower located at 2219 Piedras Street by City Representative Susie Byrd, 915-541-4996

(back-up forthcoming)

Judy Gutierrez
Assistant to Rep. Susie Byrd
District #2
915-541-4996
FAX: 541-4348

JOHN COOK
MAYOR



CITY COUNCIL
ANN MORGAN LILLY, DISTRICT 1
SUSANNAH M. BYRD, DISTRICT 2
J. ALEXANDRO LOZANO, DISTRICT 3
MELINA CASTRO, DISTRICT 4
PRESI ORTEGA, JR., DISTRICT 5
EDDIE HOLGUIN JR., DISTRICT 6
STEVE ORTEGA, DISTRICT 7
BETO O'ROURKE, DISTRICT 8

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JOYCE WILSON
CITY MANAGER

MEMORANDUM

TO: Mayor and Council
CC:
FROM: Susie Byrd, City Representative, District #2
DATE: May 24, 2007
RE: Complaint to the FCC re: a cell tower in my district

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I would like your support in sending this letter of complaint to the Federal Communications Commission regarding a cell tower that was constructed in my district. The letter of complaint and the backup contains the pertinent information.

If you have any questions, please contact me.

Thank you for your consideration.

Sincerely,

Susie Byrd

May 9, 2007

Mr. Dan Abeyta  
Assistant Deputy Chief  
Spectrum and Competition Policy Division  
Wireless Telecommunications Bureau  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Dear Mr. Abeyta:

We have been advised by a Mr. Frank Stillwell that we should write you regarding a concern that we have about a cell tower recently constructed in El Paso, Texas at 2219 Piedras.

A cell tower was built by Team Mobile within 340 feet and within the Area of Potential Effects (APE) of the Manhattan Heights Historic District. After reviewing the documents submitted to the State Historic Preservation Office (SHPO), it is our contention that Team Mobile failed to meet the standards outlined in the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission. Further, Team Mobile provided information that we contend was inaccurate and misleading in their communication with SHPO, the City and the public. Team Mobile's failure to provide accurate information resulted in an inadequate review of the application by the public and the Texas Historical Commission of the cell tower's impact on the historic district.

We ask that the FCC investigate and take appropriate action against Team Mobile for their failure to adequately comply with the provisions in the Nationwide Programmatic Agreement for Review of Effects on Historic Properties and for providing inaccurate information to SHPO.

For your review and consideration, we have enclosed a copy of the Team Mobile's NT Submission Packet and other relevant documents.

Here is a summary of our concerns:

**INACCURATE INFORMATION**

In the submission packet submitted to THC on July 11, 2006, Team Mobile describes the tower as a 75 foot tower. Team Mobile had submitted a building permit application with the City for the same location on June 27, 2006. In the application to the City, they described the proposed tower as a 90 foot tower. The tower was constructed as a 90 foot tower. (After the inconsistency was discovered, Team Mobile lowered the tower height to 75 feet, however, this failed to mitigate adverse effects on the historic district.)

In Attachment 10 of their submission to SHPO, Team Mobile describes the effects on identified properties. The historic district is eligible for historic preservation based upon

its architecture, landscape architecture and community planning. Team Mobile indicates in this attachment that “the installation of the tower will not diminish the district’s integrity, nor will it alter any of the characteristics of the district that make it eligible for inclusion on the National Register.” Team Mobile uses the following assertions to support this finding of no adverse effects:

- **FROM THE SUBMISSION PACKET.** “No significant elements of the district were observed within 1,000 feet of the proposed tower location.”
  - **OUR CONTENTION.** In fact, the whole neighborhood has been designated historic as all homes in the area are representative of the significant features that made the area eligible for historic preservation designation including architecture, landscape architecture and community planning. The whole northern portion of the district can be viewed within 1,000 feet of the proposed tower location.
- **FROM THE SUBMISSION PACKET.** “The upper portion of the tower will be in view from some points in the northern part of the district, however, the terrain slopes down to the south and east from the proposed tower location and the tower will not be visible in most areas of the district.”
  - **OUR CONTENTION.** The tower can be seen from all parts of the district. The terrain, in fact, adds to the visibility of the tower from the district.
- **FROM THE SUBMISSION PACKET.** “The tower will be set back sufficiently from North Piedras Street that it will not be directly be in the view corridor along the street.”
  - **OUR CONTENTION.** The tower is only set back 15 feet from the property line. The tower is in direct line of site along the view corridor of the street. In fact, the tower can be seen from the bottom of the district along the view corridor of the street.

It is our contention that the assertions made to defend its finding of no adverse effects are either inaccurate or misleading. Had the public had adequate opportunity to review these assertions, we could have worked with SHPO to mitigate the adverse impacts the tower has on the historic district.

#### **INADEQUATE PUBLIC REVIEW**

Per the Nationwide Programmatic Agreement, **ON OR BEFORE** the date the applicant submits the Submission Packet to SHPO, they must notify the public either through a public notification provisions of the relevant zoning or local historic preservation process OR by publication in a local newspaper. In their submission to SHPO, Team Mobile in attachment 5 says they will meet this standard “during the application and review process for the City of El Paso zoning permit.” Before the date of submission to SHPO on May 24, 2006, the City of El Paso verified to Team Mobile that they had the proper zoning on the property to construct the tower as proposed. Because of this, Team Mobile knew that they would **not have to go through a public hearing** to change the zoning of the property. Team Mobile knew they would not have to go through a public hearing process for zoning, but they still indicated to SHPO that that is how the public would be involved in reviewing the affects on the Historic District. They provided false information to

SHPO that led SHPO to believe that Team Mobile was complying with the public involvement criteria requirement.

**AFTER** the submission of the packet to SHPO on July 20, 2006, Team Mobile advertised the tower in the newspaper. However, they gave a deadline of July 28 for responding to the notification, allowing only 8 days for public comment on the proposed tower. Because they published this notice **AFTER** submission, the publication does not comply with the provisions in the Agreement.

Per their obligation under the Agreement, Team Mobile did write a letter on July 10 to the City of El Paso inviting them to be a consulting party. However, even though they knew that the Manhattan Heights Historic District was within the APE of the tower and one day later sent a letter to SHPO stating this, they failed to disclose this to the City of El Paso in their letter. The City did not have adequate information or notice to allow them to become a consulting party.

The cell tower has had a negative impact on the historic district. Many neighbors have called to complain that they believe it negatively impacts the quality of life and the character of the neighborhood. We have tried to work with Team Mobile to get them to do what they should have done in the first place: actively engage the public to minimize the tower's impact on the historic district. Because Team Mobile has refused to do this, we have decided to contact the FCC.

It is our contention that Team Mobile has not met their obligations under the Agreement, and they have provided inaccurate information to SHPO that did not allow for proper review of the effects on the historic district.

In another instance where the Historic District was within the APE of a proposed cell tower, the public and the City were given adequate notice under the provisions in the Agreement. Because the public had adequate notice and the correct information regarding the proposal, the public and the City were able to influence the design of the cell tower, ultimately resulting in a tower with significantly less adverse effects on the historic district than the one described in this letter.

We ask that the FCC investigate and take appropriate action against Team Mobile for their failure to adequately comply with the law and for providing false and misleading information to SHPO and the public. Team Mobile could mitigate the negative impact to the district by camouflaging the tower as other cell tower providers who have built towers in or near the historic district have done.

Thank you for your consideration.

John Cook  
Mayor  
City of El Paso



**Cell tower located at 2219 Piedras just outside the  
Manhattan Heights Historic District.**



**Cell tower visible from historic district and visible along the view corridor of Piedras Street. Taken from Wheeling along Piedras Street looking North.**



Cell tower located just outside the historic district that was camouflaged because of concerns raised by the City and the neighborhood through the public involvement process.

**NATIONWIDE PROGRAMMATIC AGREEMENT FOR REVIEW OF  
EFFECTS ON HISTORIC PROPERTIES FOR  
CERTAIN UNDERTAKINGS APPROVED BY THE FEDERAL  
COMMUNICATIONS COMMISSION**

September 2004

INTRODUCTION

WHEREAS, Section 106 of the National Historic Preservation Act of 1966, as amended (“NHPA”) (codified at 16 U.S.C. § 470f), requires federal agencies to take into account the effects of certain of their Undertakings on Historic Properties (see Section II, below), included in or eligible for inclusion in the National Register of Historic Places (“National Register”), and to afford the Advisory Council on Historic Preservation (“Council”) a reasonable opportunity to comment with regard to such Undertakings; and

WHEREAS, under the authority granted by Congress in the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*), the Federal Communications Commission (“Commission”) establishes rules and procedures for the licensing of non-federal government communications services, and the registration of certain antenna structures in the United States and its Possessions and Territories; and

WHEREAS, Congress and the Commission have deregulated or streamlined the application process regarding the construction of individual Facilities in many of the Commission’s licensed services; and

WHEREAS, under the framework established in the Commission’s environmental rules, 47 C.F.R. §§ 1.1301-1.1319, Commission licensees and applicants for authorizations and antenna structure registrations are required to prepare, and the Commission is required to independently review and approve, a pre-construction Environmental Assessment (“EA”) in cases where a proposed tower or antenna may significantly affect the environment, including situations where a proposed tower or antenna may affect Historic Properties that are either listed in or eligible for listing in the National Register, including properties of religious and cultural importance to an Indian tribe or Native Hawaiian organization (“NHO”) that meet the National Register criteria; and

WHEREAS, the Council has adopted rules implementing Section 106 of the NHPA (codified at 36 C.F.R. Part 800) and setting forth the process, called the “Section 106 process,” for complying with the NHPA; and

WHEREAS, pursuant to the Commission’s rules and the terms of this Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (“Nationwide Agreement”), Applicants (*see* Section II.A.2) have been authorized, consistent with the terms of the memorandum from the Council to the Commission, titled “Delegation of Authority for

the Section 106 Review of Telecommunications Projects,” dated September 21, 2000, to initiate, coordinate, and assist the Commission with compliance with many aspects of the Section 106 review process for their Facilities; and

WHEREAS, in August 2000, the Council established a Telecommunications Working Group (the “Working Group”) to provide a forum for the Commission, the Council, the National Conference of State Historic Preservation Officers (“Conference”), individual State Historic Preservation Officers (“SHPOs”), Tribal Historic Preservation Officers (“THPOs”), other tribal representatives, communications industry representatives, and other interested members of the public to discuss improved Section 106 compliance and to develop methods of streamlining the Section 106 review process; and

WHEREAS, Section 214 of the NHPA (16 U.S.C. § 470v) authorizes the Council to promulgate regulations implementing exclusions from Section 106 review, and Section 800.14(b) of the Council’s regulations (36 C.F.R § 800.14(b)) allows for programmatic agreements to streamline and tailor the Section 106 review process to particular federal programs, if they are consistent with the Council’s regulations; and

WHEREAS, the Commission, the Council, and the Conference executed on March 16, 2001, the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (the “Collocation Agreement”), in order to streamline review for the collocation of antennas on existing towers and other structures and thereby reduce the need for the construction of new towers (Attachment 1 to this Nationwide Agreement); and

WHEREAS, the Council, the Conference, and the Commission now agree it is desirable to further streamline and tailor the Section 106 review process for Facilities that are not excluded from Section 106 review under the Collocation Agreement while protecting Historic Properties that are either listed in or eligible for listing in the National Register; and

WHEREAS, the Working Group agrees that a nationwide programmatic agreement is a desirable and effective way to further streamline and tailor the Section 106 review process as it applies to Facilities; and

WHEREAS, this Nationwide Agreement will, upon its execution by the Council, the Conference, and the Commission, constitute a substitute for the Council’s rules with respect to certain Commission Undertakings; and

WHEREAS, the Commission sought public comment on a draft of this Nationwide Agreement through a *Notice of Proposed Rulemaking* released on June 9, 2003;

WHEREAS, the Commission has actively sought and received participation and comment from Indian tribes and NHOs regarding this Nationwide Agreement; and

WHEREAS, the Commission has consulted with federally recognized Indian tribes regarding this Nationwide Agreement (*see Report and Order*, FCC 04-222, at ¶ 31); and

WHEREAS, this Nationwide Agreement provides for appropriate public notification and participation in connection with the Section 106 process; and

WHEREAS, Section 101(d)(6) of the NHPA provides that federal agencies “shall consult with any Indian tribe or Native Hawaiian organization” that attaches religious and cultural significance to properties of traditional religious and cultural importance that may be determined to be eligible for inclusion in the National Register and that might be affected by a federal undertaking (16 U.S.C. § 470a(d)(6)); and

WHEREAS, the Commission has adopted a “Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes” dated June 23, 2000, pursuant to which the Commission: recognizes the unique legal relationship that exists between the federal government and Indian tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions; affirms the federal trust relationship with Indian tribes, and recognizes that this historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian tribes; commits to working with Indian tribes on a government-to-government basis consistent with the principles of tribal self-governance; commits, in accordance with the federal government’s trust responsibility, and to the extent practicable, to consult with tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect tribal governments, their land and resources; strives to develop working relationships with tribal governments, and will endeavor to identify innovative mechanisms to facilitate tribal consultations in the Commission’s regulatory processes; and endeavors to streamline its administrative process and procedures to remove undue burdens that its decisions and actions place on Indian tribes; and

WHEREAS, the Commission does not delegate under this Programmatic Agreement any portion of its responsibilities to Indian tribes and NHOs, including its obligation to consult under Section 101(d)(6) of the NHPA; and

WHEREAS, the terms of this Nationwide Agreement are consistent with and do not attempt to abrogate the rights of Indian tribes or NHOs to consult directly with the Commission regarding the construction of Facilities; and

WHEREAS, the execution and implementation of this Nationwide Agreement will not preclude Indian tribes or NHOs, SHPO/THPOs, local governments, or members of the public from filing complaints with the Commission or the Council regarding effects on Historic Properties from any Facility or any activity covered under the terms of the Nationwide Agreement; and

WHEREAS, Indian tribes and NHOs may request Council involvement in Section 106 cases that present issues of concern to Indian tribes or NHOs (see 36 C.F.R. Part 800, Appendix A, Section (c)(4)); and

WHEREAS, the Commission, after consulting with federally recognized Indian tribes, has developed an electronic Tower Construction Notification System through which

Indian tribes and NHOs may voluntarily identify the geographic areas in which Historic Properties to which they attach religious and cultural significance may be located, Applicants may ascertain which participating Indian tribes and NHOs have identified such an interest in the geographic area in which they propose to construct Facilities, and Applicants may voluntarily provide electronic notification of proposed Facilities construction for the Commission to forward to participating Indian tribes, NHOs, and SHPOs/THPOs; and

WHEREAS, the Council, the Conference and the Commission recognize that Applicants' use of qualified professionals experienced with the NHPA and Section 106 can streamline the review process and minimize potential delays; and

WHEREAS, the Commission has created a position and hired a cultural resources professional to assist with the Section 106 process; and

WHEREAS, upon execution of this Nationwide Agreement, the Council may still provide advisory comments to the Commission regarding the coordination of Section 106 reviews; notify the Commission of concerns raised by consulting parties and the public regarding an Undertaking; and participate in the resolution of adverse effects for complex, controversial, or other non-routine projects;

NOW THEREFORE, in consideration of the above provisions and of the covenants and agreements contained herein, the Council, the Conference and the Commission (the "Parties") agree as follows:

I. APPLICABILITY AND SCOPE OF THIS NATIONWIDE AGREEMENT

- A. This Nationwide Agreement (1) excludes from Section 106 review certain Undertakings involving the construction and modification of Facilities, and (2) streamlines and tailors the Section 106 review process for other Undertakings involving the construction and modification of Facilities. An illustrative list of Commission activities in relation to which Undertakings covered by this Agreement may occur is provided as Attachment 2 to this Agreement.
- B. This Nationwide Agreement applies only to federal Undertakings as determined by the Commission ("Undertakings"). The Commission has sole authority to determine what activities undertaken by the Commission or its Applicants constitute Undertakings within the meaning of the NHPA. Nothing in this Agreement shall preclude the Commission from revisiting or affect the existing ability of any person to challenge any prior determination of what does or does not constitute an Undertaking. Maintenance and servicing of Towers, Antennas, and associated equipment are not deemed to be Undertakings subject to Section 106 review.
- C. This Agreement does not apply to Antenna Collocations that are exempt from Section 106 review under the Collocation Agreement (see Attachment 1).

Pursuant to the terms of the Collocation Agreement, such Collocations shall not be subject to the Section 106 review process and shall not be submitted to the SHPO/THPO for review. This Agreement does apply to collocations that are not exempt from Section 106 review under the Collocation Agreement.

- D. This Agreement does not apply on “tribal lands” as defined under Section 800.16(x) of the Council’s regulations, 36 C.F.R. § 800.16(x) (“Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.”). This Nationwide Agreement, however, will apply on tribal lands should a tribe, pursuant to appropriate tribal procedures and upon reasonable notice to the Council, Commission, and appropriate SHPO/THPO, elect to adopt the provisions of this Nationwide Agreement. Where a tribe that has assumed SHPO functions pursuant to Section 101(d)(2) of the NHPA (16 U.S.C. § 470(d)(2)) has agreed to application of this Nationwide Agreement on tribal lands, the term SHPO/THPO denotes the Tribal Historic Preservation Officer with respect to review of proposed Undertakings on those tribal lands. Where a tribe that has not assumed SHPO functions has agreed to application of this Nationwide Agreement on tribal lands, the tribe may notify the Commission of the tribe’s intention to perform the duties of a SHPO/THPO, as defined in this Nationwide Agreement, for proposed Undertakings on its tribal lands, and in such instances the term SHPO/THPO denotes both the State Historic Preservation Officer and the tribe’s authorized representative. In all other instances, the term SHPO/THPO denotes the State Historic Preservation Officer.
- E. This Nationwide Agreement governs only review of Undertakings under Section 106 of the NHPA. Applicants completing the Section 106 review process under the terms of this Nationwide Agreement may not initiate construction without completing any environmental review that is otherwise required for effects other than historic preservation under the Commission’s rules (*See* 47 C.F.R. §§ 1.1301-1.1319). Completion of the Section 106 review process under this Nationwide Agreement satisfies an Applicant’s obligations under the Commission’s rules with respect to Historic Properties, except for Undertakings that have been determined to have an adverse effect on Historic Properties and that therefore require preparation and filing of an Environmental Assessment (*See* 47 C.F.R. § 1.1307(a)(4)).
- F. This Nationwide Agreement does not govern any Section 106 responsibilities that agencies other than the Commission may have with respect to those agencies’ federal Undertakings.

## II. DEFINITIONS

- A. The following terms are used in this Nationwide Agreement as defined below:
1. **Antenna.** An apparatus designed for the purpose of emitting radio frequency ("RF") radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a Tower, structure, or building as part of the original installation of the antenna. For most services, an Antenna will be mounted on or in, and is distinct from, a supporting structure such as a Tower, structure or building. However, in the case of AM broadcast stations, the entire Tower or group of Towers constitutes the Antenna for that station. For purposes of this Nationwide Agreement, the term Antenna does not include unintentional radiators, mobile stations, or devices authorized under Part 15 of the Commission's rules.
  2. **Applicant.** A Commission licensee, permittee, or registration holder, or an applicant or prospective applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.
  3. **Area of Potential Effects ("APE").** The geographic area or areas within which an Undertaking may directly or indirectly cause alterations in the character or use of Historic Properties, if any such properties exist.
  4. **Collocation.** The mounting or installation of an Antenna on an existing Tower, building, or structure for the purpose of transmitting radio frequency signals for telecommunications or broadcast purposes.
  5. **Effect.** An alteration to the characteristics of a Historic Property qualifying it for inclusion in or eligibility for the National Register.
  6. **Experimental Authorization.** An authorization issued to conduct experimentation utilizing radio waves for gathering scientific or technical operation data directed toward the improvement or extension of an established service and not intended for reception and use by the general public. "Experimental Authorization" does not include an "Experimental Broadcast Station" authorized under Part 74 of the Commission's rules.
  7. **Facility.** A Tower or an Antenna. The term Facility may also refer to a Tower and its associated Antenna(s).

8. Field Survey. A research strategy that utilizes one or more visits to the area where construction is proposed as a means of identifying Historic Properties.
  9. Historic Property. Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or NHO that meet the National Register criteria.
  10. National Register. The National Register of Historic Places, maintained by the Secretary of the Interior's office of the Keeper of the National Register.
  11. SHPO/THPO Inventory. A set of records of previously gathered information, authorized by state or tribal law, on the absence, presence and significance of historic and archeological resources within the state or tribal land.
  12. Special Temporary Authorization. Authorization granted to a permittee or licensee to allow the operation of a station for a limited period at a specified variance from the terms of the station's permanent authorization or requirements of the Commission's rules applicable to the particular class or type of station.
  13. Submission Packet. The document to be submitted initially to the SHPO/THPO to facilitate review of the Applicant's findings and any determinations with regard to the potential impact of the proposed Undertaking on Historic Properties in the APE. There are two Submission Packets: (a) The New Tower Submission Packet (FCC Form 620) (See Attachment 3) and (b) The Collocation Submission Packet (FCC Form 621) (See Attachment 4). Any documents required to be submitted along with a Form are part of the Submission Packet.
  14. Tower. Any structure built for the sole or primary purpose of supporting Commission-licensed or authorized Antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna as defined herein.
- B. All other terms not defined above or elsewhere in this Nationwide Agreement shall have the same meaning as set forth in the Council's rules section on Definitions (36 C.F.R. § 800.16) or the Commission's rules (47 C.F.R. Chapter I).

- C. For the calculation of time periods under this Agreement, "days" mean "calendar days." Any time period specified in the Agreement that ends on a weekend or a Federal or State holiday is extended until the close of the following business day.
- D. Written communications include communications by e-mail or facsimile.

### III. UNDERTAKINGS EXCLUDED FROM SECTION 106 REVIEW

Undertakings that fall within the provisions listed in the following sections III.A. through III.F. are excluded from Section 106 review by the SHPO/THPO, the Commission, and the Council, and, accordingly, shall not be submitted to the SHPO/THPO for review. The determination that an exclusion applies to an Undertaking should be made by an authorized individual within the Applicant's organization, and Applicants should retain documentation of their determination that an exclusion applies. Concerns regarding the application of these exclusions from Section 106 review may be presented to and considered by the Commission pursuant to Section XI.

- A. Enhancement of a tower and any associated excavation that does not involve a collocation and does not substantially increase the size of the existing tower, as defined in the Collocation Agreement. For towers constructed after March 16, 2001, this exclusion applies only if the tower has completed the Section 106 review process and any associated environmental reviews required by the Commission.
- B. Construction of a replacement for an existing communications tower and any associated excavation that does not substantially increase the size of the existing tower under elements 1-3 of the definition as defined in the Collocation Agreement (see Attachment 1 to this Agreement, Stipulation 1.c.1-3) and that does not expand the boundaries of the leased or owned property surrounding the tower by more than 30 feet in any direction or involve excavation outside these expanded boundaries or outside any existing access or utility easement related to the site. For towers constructed after March 16, 2001, this exclusion applies only if the tower has completed the Section 106 review process and any associated environmental reviews required by the Commission's rules.
- C. Construction of any temporary communications Tower, Antenna structure, or related Facility that involves no excavation or where all areas to be excavated will be located in areas described in Section VI.D.2.c.i below, including but not limited to the following:
  - 1. A Tower or Antenna authorized by the Commission for a temporary period, such as any Facility authorized by a Commission grant of Special Temporary Authority ("STA") or emergency authorization;

2. A cell on wheels (COW) transmission Facility;
3. A broadcast auxiliary services truck, TV pickup station, remote pickup broadcast station (e.g., electronic newsgathering vehicle) authorized under Part 74 or temporary fixed or transportable earth station in the fixed satellite service (e.g., satellite newsgathering vehicle) authorized under Part 25;
4. A temporary ballast mount Tower;
5. Any Facility authorized by a Commission grant of an experimental authorization.

For purposes of this Section III.C, the term “temporary” means “for no more than twenty-four months duration except in the case of those Facilities associated with national security.”

- D. Construction of a Facility less than 200 feet in overall height above ground level in an existing industrial park,<sup>1</sup> commercial strip mall,<sup>2</sup> or shopping center<sup>3</sup> that occupies a total land area of 100,000 square feet or more, provided that the industrial park, strip mall, or shopping center is not located within the boundaries of or within 500 feet of a Historic Property, as identified by the Applicant after a preliminary search of relevant records. Proposed Facilities within this exclusion must complete the process of participation of Indian tribes and NHOs pursuant to Section IV of this Agreement. If as a result of this process the Applicant or the Commission identifies a Historic Property that may be affected, the Applicant must complete the Section 106 review process pursuant to this Agreement notwithstanding the exclusion.
- E. Construction of a Facility in or within 50 feet of the outer boundary of a right-of-way designated by a Federal, State, local, or Tribal government for the location of communications Towers or above-ground utility transmission or

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<sup>1</sup> A tract of land that is planned, developed, and operated as an integrated facility for a number of individual industrial uses, with consideration to transportation facilities, circulation, parking, utility needs, aesthetics and compatibility.

<sup>2</sup> A structure or grouping of structures, housing retail business, set back far enough from the street to permit parking spaces to be placed between the building entrances and the public right of way.

<sup>3</sup> A group of commercial establishments planned, constructed, and managed as a total entity, with customer and employee parking provided on-site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage in accordance with an approved plan.

distribution lines and associated structures and equipment and in active use for such purposes, provided:

1. The proposed Facility would not constitute a substantial increase in size, under elements 1-3 of the definition in the Collocation Agreement, over existing structures located in the right-of-way within the vicinity of the proposed Facility, and;
2. The proposed Facility would not be located within the boundaries of a Historic Property, as identified by the Applicant after a preliminary search of relevant records.

Proposed Facilities within this exclusion must complete the process of participation of Indian tribes and NHOs pursuant to Section IV of this Agreement. If as a result of this process the Applicant or the Commission identifies a Historic Property that may be affected, the Applicant must complete the Section 106 review process pursuant to this Agreement notwithstanding the exclusion.

- F. Construction of a Facility in any area previously designated by the SHPO/THPO at its discretion, following consultation with appropriate Indian tribes and NHOs, as having limited potential to affect Historic Properties. Such designation shall be documented by the SHPO/THPO and made available for public review.

#### IV. PARTICIPATION OF INDIAN TRIBES AND NATIVE HAWAIIAN ORGANIZATIONS IN UNDERTAKINGS OFF TRIBAL LANDS

- A. The Commission recognizes its responsibility to carry out consultation with any Indian tribe or NHO that attaches religious and cultural significance to a Historic Property if the property may be affected by a Commission undertaking. This responsibility is founded in Sections 101(d)(6)(a-b) and 106 of the NHPA (16 U.S.C. §§ 470a(d)(6)(a-b) and 470f), the regulations of the Council (36 C.F.R. Part 800), the Commission's environmental regulations (47 C.F.R. §§ 1.1301-1.1319), and the unique legal relationship that exists between the federal government and Indian Tribal governments, as reflected in the Constitution of the United States, treaties, federal statutes, Executive orders, and numerous court decisions. This historic trust relationship requires the federal government to adhere to certain fiduciary standards in its dealings with Indian Tribes. (*Commission Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*).
- B. As an initial step to enable the Commission to fulfill its duty of consultation, Applicants shall use reasonable and good faith efforts to identify any Indian tribe or NHO that may attach religious and cultural significance to Historic

Properties that may be affected by an Undertaking. Applicants should be aware that frequently, Historic Properties of religious and cultural significance to Indian tribes and NHOs are located on ancestral, aboriginal, or ceded lands of such tribes and organizations and Applicants should take this into account when complying with their responsibilities. Where an Indian tribe or NHO has voluntarily provided information to the Commission's Tower Construction Notification System regarding the geographic areas in which Historic Properties of religious and cultural significance to that Indian tribe or NHO may be located, reference to the Tower Construction Notification System shall constitute a reasonable and good faith effort at identification with respect to that Indian tribe or NHO. In addition, such reasonable and good faith efforts may include, but are not limited to, seeking relevant information from the relevant SHPO/THPO, Indian tribes, state agencies, the U.S. Bureau of Indian Affairs ("BIA"), or, where applicable, any federal agency with land holdings within the state (e.g., the U.S. Bureau of Land Management). Although these agencies can provide useful information in identifying potentially affected Indian tribes, contacting BIA, the SHPO or other federal and state agencies is not a substitute for seeking information directly from Indian tribes that may attach religious and cultural significance to a potentially affected Historic Property, as described below.

- C. After the Applicant has identified Indian tribes and NHOs that may attach religious and cultural significance to potentially affected Historic Properties, the Commission has the responsibility, and the Commission imposes on the Applicant the obligation, to ensure that contact is made at an early stage in the planning process with such Indian tribes and NHOs in order to begin the process of ascertaining whether such Historic Properties may be affected. This initial contact shall be made by the Commission or the Applicant, in accordance with the wishes of the Indian tribe or NHO. This contact shall constitute only an initial effort to contact the Indian tribe or NHO, and does not in itself fully satisfy the Applicant's obligations or substitute for government-to-government consultation unless the Indian tribe or NHO affirmatively disclaims further interest or the Indian tribe or NHO has otherwise agreed that such contact is sufficient. Depending on the preference of the Indian tribe or NHO, the means of initial contact may include, without limitation:
1. Electronic notification through the Commission's Tower Construction Notification System;
  2. Written communication from the Commission at the request of the Applicant;
  3. Written, e-mail, or telephonic notification directly from the Applicant to the Indian tribe or NHO;

4. Any other means that the Indian Tribe or NHO has informed the Commission are acceptable, including through the adoption of best practices pursuant to Section IV.J, below; or
  5. Any other means to which an Indian tribe or NHO and an Applicant have agreed pursuant to Section IV.K, below.
- D. The Commission will use its best efforts to ascertain the preferences of each Indian tribe and NHO for initial contact, and to make these preferences available to Applicants in a readily accessible format. In addition, the Commission will use its best efforts to ascertain, and to make available to Applicants, any locations or types of construction projects, within the broad geographic areas in which Historic Properties of religious and cultural significance to an Indian tribe or NHO may be located, for which the Indian tribe or NHO does not expect notification. To the extent they are comfortable doing so, the Commission encourages Indian tribes and NHOs to accept the Tower Construction Notification System as an efficient and thorough means of making initial contact.
- E. In the absence of any contrary indication of an Indian tribe's or NHO's preference, where an Applicant does not have a pre-existing relationship with an Indian tribe or NHO, initial contact with the Indian tribe or NHO shall be made through the Commission. Unless the Indian tribe or NHO has indicated otherwise, the Commission may make this initial contact through the Tower Construction Notification System. An Applicant that has a pre-existing relationship with an Indian tribe or NHO shall make initial contact in the manner that is customary to that relationship or in such other manner as may be accepted by the Indian tribe or NHO. An Applicant shall copy the Commission on any initial written or electronic direct contact with an Indian tribe or NHO, unless the Indian tribe or NHO has agreed through a best practices agreement or otherwise that such copying is not necessary.
- F. Applicants' direct contacts with Indian tribes and NHOs, where accepted by the Indian tribe or NHO, shall be made in a sensitive manner that is consistent with the reasonable wishes of the Indian tribe or NHO, where such wishes are known or can be reasonably ascertained. In general, unless an Indian tribe or NHO has provided guidance to the contrary, Applicants shall follow the following guidelines:
1. All communications with Indian tribes shall be respectful of tribal sovereignty;
  2. Communications shall be directed to the appropriate representative designated or identified by the tribal government or other governing body;

3. Applicants shall provide all information reasonably necessary for the Indian tribe or NHO to evaluate whether Historic Properties of religious and cultural significance may be affected. The parties recognize that it may be neither feasible nor desirable to provide complete information about the project at the time of initial contact, particularly when initial contact is made early in the process. Unless the Indian tribe or NHO affirmatively disclaims interest, however, it shall be provided with complete information within the earliest reasonable time frame;
  4. The Applicant must ensure that Indian tribes and NHOs have a reasonable opportunity to respond to all communications. Ordinarily, 30 days from the time the relevant tribal or NHO representative may reasonably be expected to have received an inquiry shall be considered a reasonable time. Should a tribe or NHO request additional time to respond, the Applicant shall afford additional time as reasonable under the circumstances. However, where initial contact is made automatically through the Tower Construction Notification System, and where an Indian tribe or NHO has stated that it is not interested in reviewing proposed construction of certain types or in certain locations, the Applicant need not await a response to contact regarding proposed construction meeting that description;
  5. Applicants should not assume that failure to respond to a single communication establishes that an Indian tribe or NHO is not interested in participating, but should make a reasonable effort to follow up.
- G. The purposes of communications between the Applicant and Indian tribes or NHOs are: (1) to ascertain whether Historic Properties of religious and cultural significance to the Indian tribe or NHO may be affected by the undertaking and consultation is therefore necessary, and (2) where possible, with the concurrence of the Indian tribe or NHO, to reach an agreement on the presence or absence of effects that may obviate the need for consultation. Accordingly, the Applicant shall promptly refer to the Commission any request from a federally recognized Indian tribe for government-to-government consultation. The Commission will then carry out government-to-government consultation with the Indian tribe. Applicants shall also seek guidance from the Commission in the event of any substantive or procedural disagreement with an Indian tribe or NHO, or if the Indian tribe or NHO does not respond to the Applicant's inquiries. Applicants are strongly advised to seek guidance from the Commission in cases of doubt.
- H. If an Indian tribe or NHO indicates that a Historic Property of religious and cultural significance to it may be affected, the Applicant shall invite the

commenting tribe or organization to become a consulting party. If the Indian tribe or NHO agrees to become a consulting party, it shall be afforded that status and shall be provided with all of the information, copies of submissions, and other prerogatives of a consulting party as provided for in 36 C.F.R. § 800.2.

- I. Information regarding Historic Properties to which Indian tribes or NHOs attach religious and cultural significance may be highly confidential, private, and sensitive. If an Indian tribe or NHO requests confidentiality from the Applicant, the Applicant shall honor this request and shall, in turn, request confidential treatment of such materials or information in accordance with the Commission's rules and Section 304 of the NHPA (16 U.S.C. § 470w-3(a)) in the event they are submitted to the Commission. The Commission shall provide such confidential treatment consistent with its rules and applicable federal laws. Although the Commission will strive to protect the privacy interests of all parties, the Commission cannot guarantee its own ability or the ability of Applicants to protect confidential, private, and sensitive information from disclosure under all circumstances.
- J. In order to promote efficiency, minimize misunderstandings, and ensure that communications among the parties are made in accordance with each Indian tribe or NHO's reasonable preferences, the Commission will use its best efforts to arrive at agreements regarding best practices with Indian tribes and NHOs and their representatives. Such best practices may include means of making initial contacts with Indian tribes and NHOs as well as guidelines for subsequent discussions between Applicants and Indian tribes or NHOs in fulfillment of the requirements of the Section 106 process. To the extent possible, the Commission will strive to achieve consistency among best practice agreements with Indian tribes and NHOs. Where best practices exist, the Commission encourages Applicants to follow those best practices.
- K. Nothing in this Section shall be construed to prohibit or limit Applicants and Indian tribes or NHOs from entering into or continuing pre-existing arrangements or agreements governing their contacts, provided such arrangements or agreements are otherwise consistent with federal law and no modification is made in the roles of other parties to the process under this Nationwide Agreement without their consent. Documentation of such alternative arrangements or agreements should be filed with the Commission.

V. PUBLIC PARTICIPATION AND CONSULTING PARTIES

- A. On or before the date an Applicant submits the appropriate Submission Packet to the SHPO/THPO, as prescribed by Section VII, below, the Applicant shall provide the local government that has primary land use jurisdiction over the

site of the planned Undertaking with written notification of the planned Undertaking.

- July 10th
- B. On or before the date an Applicant submits the appropriate Submission Packet to the SHPO/THPO, as prescribed by Section VII, below, the Applicant shall provide written notice to the public of the planned Undertaking. Such notice may be accomplished (1) through the public notification provisions of the relevant local zoning or local historic preservation process for the proposed Facility, or (2) by publication in a local newspaper of general circulation. In the alternative, an Applicant may use other appropriate means of providing public notice, including seeking the assistance of the local government.
- C. The written notice to the local government and to the public shall include: (1) the location of the proposed Facility including its street address; (2) a description of the proposed Facility including its height and type of structure; (3) instruction on how to submit comments regarding potential effects on Historic Properties; and (4) the name, address, and telephone number of a contact person.
- D. A SHPO/THPO may make available lists of other groups, including Indian tribes, NHOs and organizations of Indian tribes or NHOs, which should be provided notice for Undertakings to be located in particular areas.
- E. If the Applicant receives a comment regarding potentially affected Historic Properties, the Applicant shall consider the comment and either include it in the initial submission to the SHPO/THPO, or, if the initial submission has already been made, immediately forward the comment to the SHPO/THPO for review. An Applicant need not submit to the SHPO/THPO any comment that does not substantially relate to potentially affected Historic Properties.
- F. The relevant SHPO/THPO, Indian tribes and NHOs that attach religious and cultural significance to Historic Properties that may be affected, and the local government are entitled to be consulting parties in the Section 106 review of an Undertaking. The Council may enter the Section 106 process for a given Undertaking, on Commission invitation or on its own decision, in accordance with 36 C.F.R. Part 800, Appendix A. An Applicant shall consider all written requests of other individuals and organizations to participate as consulting parties and determine which should be consulting parties. An Applicant is encouraged to grant such status to individuals or organizations with a demonstrated legal or economic interest in the Undertaking, or demonstrated expertise or standing as a representative of local or public interest in historic or cultural resources preservation. Any such individual or organization denied consulting party status may petition the Commission for review of such denial. Applicants may seek assistance from the Commission in identifying

and involving consulting parties. All entities granted consulting party status shall be identified to the SHPO/THPO as part of the Submission Packet.

- G. Consulting parties are entitled to: (1) receive notices, copies of submission packets, correspondence and other documents provided to the SHPO/THPO in a Section 106 review; and (2) be provided an opportunity to have their views expressed and taken into account by the Applicant, the SHPO/THPO and, where appropriate, by the Commission.

## VI. IDENTIFICATION, EVALUATION, AND ASSESSMENT OF EFFECTS

- A. In preparing the Submission Packet for the SHPO/THPO and consulting parties pursuant to Section VII of this Nationwide Agreement and Attachments 3 and 4, the Applicant shall: (1) define the area of potential effects (APE); (2) identify Historic Properties within the APE; (3) evaluate the historic significance of identified properties as appropriate; and (4) assess the effects of the Undertaking on Historic Properties. The standards and procedures described below shall be applied by the Applicant in preparing the Submission Packet, by the SHPO/THPO in reviewing the Submission Packet, and where appropriate, by the Commission in making findings.

- B. Exclusion of Specific Geographic Areas from Review.

The SHPO/THPO, consistent with relevant State or tribal procedures, may specify geographic areas in which no review is required for direct effects on archeological resources or no review is required for visual effects.

- C. Area of Potential Effects.

1. The term "Area of Potential Effects" is defined in Section II.A.3 of this Nationwide Agreement. For purposes of this Nationwide Agreement, the APE for direct effects and the APE for visual effects are further defined and are to be established as described below.
2. The APE for direct effects is limited to the area of potential ground disturbance and any property, or any portion thereof, that will be physically altered or destroyed by the Undertaking.
3. The APE for visual effects is the geographic area in which the Undertaking has the potential to introduce visual elements that diminish or alter the setting, including the landscape, where the setting is a character-defining feature of a Historic Property that makes it eligible for listing on the National Register.

4. Unless otherwise established through consultation with the SHPO/THPO, the presumed APE for visual effects for construction of new Facilities is the area from which the Tower will be visible:
    - a. Within a half mile from the tower site if the proposed Tower is 200 feet or less in overall height;
    - b. Within  $\frac{3}{4}$  of a mile from the tower site if the proposed Tower is more than 200 but no more than 400 feet in overall height; or
    - c. Within  $1\frac{1}{2}$  miles from the proposed tower site if the proposed Tower is more than 400 feet in overall height.
  5. In the event the Applicant determines, or the SHPO/THPO recommends, that an alternative APE for visual effects is necessary, the Applicant and the SHPO/THPO may mutually agree to an alternative APE.
  6. If the Applicant and the SHPO/THPO, after using good faith efforts, cannot reach an agreement on the use of an alternative APE, either the Applicant or the SHPO/THPO may submit the issue to the Commission for resolution. The Commission shall make its determination concerning an alternative APE within a reasonable time.
- D. Identification and Evaluation of Historic Properties.
1. Identification and Evaluation of Historic Properties Within the APE for Visual Effects.
    - a. Except to identify Historic Properties of religious and cultural significance to Indian tribes and NHOs, Applicants shall identify Historic Properties within the APE for visual effects by reviewing the following records. Applicants are required to review such records only to the extent they are available at the offices of the SHPO/THPO or can be found in publicly available sources identified by the SHPO/THPO. With respect to these properties, Applicants are not required to undertake a Field Survey or other measures other than reviewing these records in order to identify Historic Properties:
      - i. Properties listed in the National Register;
      - ii. Properties formally determined eligible for listing by the Keeper of the National Register;

- iii. Properties that the SHPO/THPO certifies are in the process of being nominated to the National Register;
  - iv. Properties previously determined eligible as part of a consensus determination of eligibility between the SHPO/THPO and a Federal Agency or local government representing the Department of Housing and Urban Development (HUD); and
  - v. Properties listed in the SHPO/THPO Inventory that the SHPO/THPO has previously evaluated and found to meet the National Register criteria, and that are identified accordingly in the SHPO/THPO Inventory.
- b. At an early stage in the planning process and in accordance with Section IV of this Nationwide Agreement, the Commission or the Applicant, as appropriate, shall gather information from Indian tribes or NHOs identified pursuant to Section IV.B to assist in identifying Historic Properties of religious and cultural significance to them within the APE for visual effects. Such information gathering may include a Field Survey where appropriate.
- c. Based on the sources listed above and public comment received pursuant to Section V of this Nationwide Agreement, the Applicant shall include in its Submission Packet a list of properties it has identified as apparent Historic Properties within the APE for visual effects.
- i. During the review period described in Section VII.A, the SHPO/THPO may identify additional properties included in the SHPO/THPO Inventory and located within the APE that the SHPO/THPO considers eligible for listing on the National Register, and notify the Applicant pursuant to Section VII.A.4.
  - ii. The SHPO/THPO may also advise the Applicant that previously identified properties on the list no longer qualify for inclusion in the National Register.
- d. Applicants are encouraged at their discretion to use the services of professionals who meet the Secretary of the Interior's Professional Qualification Standards when identifying Historic Properties within the APE for visual effects.

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- e. Applicants are not required to evaluate the historic significance of properties identified pursuant to Section VI.D.1.a., but may rely on the previous evaluation of these properties. Applicants may, at their discretion, evaluate whether such properties are no longer eligible for inclusion in the National Register and recommend to the SHPO/THPO their removal from consideration. Any such evaluation shall be performed by a professional who meets the Secretary of the Interior's Professional Qualification Standards.
2. Identification and Evaluation of Historic Properties Within the APE for Direct Effects.
- a. In addition to the properties identified pursuant to Section VI.D.1, Applicants shall make a reasonable good faith effort to identify other above ground and archeological Historic Properties, including buildings, structures, and historic districts, that lie within the APE for direct effects. Such reasonable and good faith efforts may include a Field Survey where appropriate.
  - b. Identification and evaluation of Historic Properties within the APE for direct effects, including any finding that an archeological Field Survey is not required, shall be undertaken by a professional who meets the Secretary of the Interior's Professional Qualification Standards. Identification and evaluation relating to archeological resources shall be performed by a professional who meets the Secretary of the Interior's Professional Qualification Standards in archeology.
  - c. Except as provided below, the Applicant need not undertake a Field Survey for archeological resources where:
    - i. the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least 2 feet as documented in the Applicant's siting analysis; or
    - ii. geomorphological evidence indicates that cultural resource-bearing soils do not occur within the project area or may occur but at depths that exceed 2 feet below the proposed construction depth.
  - d. At an early stage in the planning process and in accordance with Section IV of this Nationwide Agreement, the

Commission or the Applicant, as appropriate, shall gather information from Indian tribes or NHOs identified pursuant to Section IV.B to assist in identifying archeological Historic Properties of religious and cultural significance to them within the APE for direct effects. If an Indian tribe or NHO provides evidence that supports a high probability of the presence of intact archeological Historic Properties within the APE for direct effects, the Applicant shall conduct an archeological Field Survey notwithstanding Section VI.D.2.c.

- e. Where the Applicant pursuant to Sections VI.D.2.c and VI.D.2.d finds that no archeological Field Survey is necessary, it shall include in its Submission Packet a report substantiating this finding. During the review period described in Section VII.A, the SHPO/THPO may, based on evidence that supports a high probability of the presence of intact archeological Historic Properties within the APE for direct effects, notify the Applicant that the Submission Packet is inadequate without an archeological Field Survey pursuant to Section VII.A.4.
- f. The Applicant shall conduct an archeological Field Survey within the APE for direct effects if neither of the conditions in Section VI.D.2.c applies, or if required pursuant to Section VI.D.2.d or e. The Field Survey shall be conducted in consultation with the SHPO/THPO and consulting Indian tribes or NHOs.
- g. The Applicant, in consultation with the SHPO/THPO and appropriate Indian tribes or NHOs, shall apply the National Register criteria (36 C.F.R. Part 63) to properties identified within the APE for direct effects that have not previously been evaluated for National Register eligibility, with the exception of those identified pursuant to Section VI.D.1.a.

### 3. Dispute Resolution

Where there is a disagreement regarding the identification or eligibility of a property, and after attempting in good faith to resolve the issue the Applicant and the SHPO/THPO continue to disagree, the Applicant or the SHPO/THPO may submit the issue to the Commission. The Commission shall handle such submissions in accordance with 36 C.F.R. § 800.4(c)(2).

## E. Assessment of Effects

1. Applicants shall assess effects of the Undertaking on Historic Properties using the Criteria of Adverse Effect (36 C.F.R. § 800.5(a)(1)).
2. In determining whether Historic Properties in the APE may be adversely affected by the Undertaking, the Applicant should consider factors such as the topography, vegetation, known presence of Historic Properties, and existing land use.
3. An Undertaking will have a visual adverse effect on a Historic Property if the visual effect from the Facility will noticeably diminish the integrity of one or more of the characteristics qualifying the property for inclusion in or eligibility for the National Register. Construction of a Facility will not cause a visual adverse effect except where visual setting or visual elements are character-defining features of eligibility of a Historic Property located within the APE.
4. For collocations not excluded from review by the Collocation Agreement or this Agreement, the assessment of effects will consider only effects from the newly added or modified Facilities and not effects from the existing Tower or Antenna.
5. Assessment pursuant to this Agreement shall be performed by professionals who meet the Secretary of the Interior's Professional Qualification Standards.

## VII. PROCEDURES

## A. Use of the Submission Packet.

1. For each Undertaking within the scope of this Nationwide Agreement, the Applicant shall initially determine whether there are no Historic Properties affected, no adverse effect on Historic Properties, or an adverse effect on Historic Properties. The Applicant shall prepare a Submission Packet and submit it to the SHPO/THPO and to all consulting parties, including any Indian tribe or NHO that is participating as a consulting party.
2. The SHPO/THPO shall have 30 days from receipt of the requisite documentation to review the Submission Packet.
3. If the SHPO/THPO receives a comment or objection, in accordance with Section V.E, more than 25 but less than 31 days following its receipt of the initial submission, the SHPO/THPO shall have five calendar days to consider such comment or objection before the Section 106 process is complete or the matter may be submitted to the Commission.

4. If the SHPO/THPO determines the Applicant's Submission Packet is inadequate, or if the SHPO/THPO identifies additional Historic Properties within the APE, the SHPO/THPO will immediately notify the Applicant and describe any deficiencies. The SHPO/THPO may close its file without prejudice if the Applicant does not resubmit an amended Submission Packet within 60 days following the Applicant's receipt of the returned Submission Packet. Resubmission of the Submission Packet to the SHPO/THPO commences a new 30 day period for review.

B. Determinations of No Historic Properties Affected.

1. If the SHPO/THPO concurs in writing with the Applicant's determination of no Historic Properties affected, it is deemed that no Historic Properties exist within the APE or the Undertaking will have no effect on any Historic Properties located within the APE. The Section 106 process is then complete, and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.
2. If the SHPO/THPO does not provide written notice to the Applicant that it agrees or disagrees with the Applicant's determination of no Historic Properties affected within 30 days following receipt of a complete Submission Packet, it is deemed that no Historic Properties exist within the APE or the Undertaking will have no effect on Historic Properties. The Section 106 process is then complete and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.
3. If the SHPO/THPO provides written notice within 30 days following receipt of the Submission Packet that it disagrees with the Applicant's determination of no Historic Properties affected, it should provide a short and concise explanation of exactly how the criteria of eligibility and/or criteria of Adverse Effect would apply. The Applicant and the SHPO/THPO should engage in further discussions and make a reasonable and good faith effort to resolve their disagreement.
4. If the SHPO/THPO and Applicant do not resolve their disagreement, the Applicant may at any time choose to submit the matter, together with all relevant documents, to the Commission, advising the SHPO/THPO accordingly.

C. Determinations of No Adverse Effect.

1. If the SHPO/THPO concurs in writing with the Applicant's determination of no adverse effect, the Facility is deemed to have no adverse effect on Historic Properties. The Section 106 process is then

- complete and the Applicant may proceed with the project, unless further processing for reasons other than Section 106 is required.
2. If the SHPO/THPO does not provide written notice to the Applicant that it agrees or disagrees with the Applicant's determination of no adverse effect within thirty days following its receipt of a complete Submission Packet, the SHPO/THPO is presumed to have concurred with the Applicant's determination. The Applicant shall, pursuant to procedures to be promulgated by the Commission, forward a copy of its Submission Packet to the Commission, together with all correspondence with the SHPO/THPO and any comments or objections received from the public, and advise the SHPO/THPO accordingly. The Section 106 process shall then be complete unless the Commission notifies the Applicant otherwise within 15 days after the Commission receives the Submission Packet and accompanying material electronically or 25 days after the Commission receives this material by other means.
  3. If the SHPO/THPO provides written notice within 30 days following receipt of the Submission Packet that it disagrees with the Applicant's determination of no adverse effect, it should provide a short and concise explanation of the Historic Properties it believes to be affected and exactly how the criteria of Adverse Effect would apply. The Applicant and the SHPO/THPO should engage in further discussions and make a reasonable and good faith effort to resolve their disagreement.
  4. If the SHPO/THPO and Applicant do not resolve their dispute, the Applicant may at any time choose to submit the matter, together with all relevant documents, to the Commission, advising the SHPO/THPO accordingly.
  5. Whenever the Applicant or the Commission concludes, or a SHPO/THPO advises, that a proposed project will have an adverse effect on a Historic Property, after applying the criteria of Adverse Effect, the Applicant and the SHPO/THPO are encouraged to investigate measures that would avoid the adverse effect and permit a conditional "No Adverse Effect" determination.
  6. If the Applicant and SHPO/THPO mutually agree upon conditions that will result in no adverse effect, the Applicant shall advise the SHPO/THPO in writing that it will comply with the conditions. The Applicant can then make a determination of no adverse effect subject to its implementation of the conditions. The Undertaking is then deemed conditionally to have no adverse effect on Historic Properties, and the Applicant may proceed with the project subject to compliance with those conditions. Where the Commission has previously been

involved in the matter, the Applicant shall notify the Commission of this resolution.

D. Determinations of Adverse Effect.

1. If the Applicant determines at any stage in the process that an Undertaking would have an adverse effect on Historic Properties within the APE(s), or if the Commission so finds, the Applicant shall submit to the SHPO/THPO a plan designed to avoid, minimize, or mitigate the adverse effect.
2. The Applicant shall forward a copy of its submission with its mitigation plan and the entire record to the Council and the Commission. Within fifteen days following receipt of the Applicant's submission, the Council shall indicate whether it intends to participate in the negotiation of a Memorandum of Agreement by notifying both the Applicant and the Commission.
3. Where the Undertaking would have an adverse effect on a National Historic Landmark, the Commission shall request the Council to participate in consultation and shall invite participation by the Secretary of the Interior.
4. The Applicant, SHPO/THPO, and consulting parties shall negotiate a Memorandum of Agreement that shall be sent to the Commission for review and execution.
5. If the parties are unable to agree upon mitigation measures, they shall submit the matter to the Commission, which shall coordinate additional actions in accordance with the Council's rules, including 36 C.F.R. §§ 800.6(b)(1)(v) and 800.7.

E. Retention of Information.

The SHPO/THPO shall, subject to applicable state or tribal laws and regulations, and in accordance with its rules and procedures governing historic property records, retain the information in the Submission Packet pertaining to the location and National Register eligibility of Historic Properties and make such information available to Federal agencies and Applicants in other Section 106 reviews, where disclosure is not prevented by the confidentiality standards in 36 C.F.R. § 800.11(c).

F. Removal of Obsolete Towers.

Applicants that construct new Towers under the terms of this Nationwide Agreement adjacent to or within the boundaries of a Historic Property are encouraged to disassemble such Towers should they become obsolete or remain vacant for a year or more.

### VIII. EMERGENCY SITUATIONS

Unless the Commission deems it necessary to issue an emergency authorization in accordance with its rules, or the Undertaking is otherwise excluded from Section 106 review pursuant to the Collocation Agreement or Section III of this Agreement, the procedures in this Agreement shall apply.

### IX. INADVERTENT OR POST-REVIEW DISCOVERIES

- A. In the event that an Applicant discovers a previously unidentified site within the APE that may be a Historic Property that would be affected by an Undertaking, the Applicant shall promptly notify the Commission, the SHPO/THPO and any potentially affected Indian tribe or NHO, and within a reasonable time shall submit to the Commission, the SHPO/THPO and any potentially affected Indian tribe or NHO, a written report evaluating the property's eligibility for inclusion in the National Register. The Applicant shall seek the input of any potentially affected Indian tribe or NHO in preparing this report. If found during construction, construction must cease until evaluation has been completed.
- B. If the Applicant and SHPO/THPO concur that the discovered resource is eligible for listing in the National Register, the Applicant will consult with the SHPO/THPO, and Indian tribes or NHOs as appropriate, to evaluate measures that will avoid, minimize, or mitigate adverse effects. Upon agreement regarding such measures, the Applicant shall implement them and notify the Commission of its action.
- C. If the Applicant and SHPO/THPO cannot reach agreement regarding the eligibility of a property, the matter will be referred to the Commission for review in accordance with Section VI.D.3. If the Applicant and the SHPO/THPO cannot reach agreement on measures to avoid, minimize, or mitigate adverse effects, the matter shall be referred to the Commission for appropriate action.
- D. If the Applicant discovers any human or burial remains during implementation of an Undertaking, the Applicant shall cease work immediately, notify the SHPO/THPO and Commission, and adhere to applicable State and Federal laws regarding the treatment of human or burial remains.

### X. CONSTRUCTION PRIOR TO COMPLIANCE WITH SECTION 106

- A. The terms of Section 110(k) of the National Historic Preservation Act (16 U.S.C. § 470h-2(k)) ("Section 110(k)") apply to Undertakings covered by this Agreement. Any SHPO/THPO, potentially affected Indian tribe or NHO, the Council, or a member of the public may submit a complaint to the Commission alleging that a facility has been constructed or partially

constructed after the effective date of this Agreement in violation of Section 110(k). Any such complaint must be in writing and supported by substantial evidence specifically describing how Section 110(k) has been violated. Upon receipt of such complaint the Commission will assume responsibility for investigating the applicability of Section 110(k) in accordance with the provisions herein.

- B. If upon its initial review, the Commission concludes that a complaint on its face demonstrates a probable violation of Section 110(k), the Commission will immediately notify and provide the relevant Applicant with copies of the Complaint and order that all construction of a new tower or installation of any new collocations immediately cease and remain suspended pending the Commission's resolution of the complaint.
- C. Within 15 days of receipt, the Commission will review the complaint and take appropriate action, which the Commission may determine, and which may include the following:
  - 1. Dismiss the complaint without further action if the complaint does not establish a probable violation of Section 110(k) even if the allegations are taken as true;
  - 2. Provide the Applicant with a copy of the complaint and request a written response within a reasonable time;
  - 3. Request from the Applicant a background report which documents the history and chronology of the planning and construction of the Facility;
  - 4. Request from the Applicant a summary of the steps taken to comply with the requirements of Section 106 as set forth in this Nationwide Agreement, particularly the application of the Criteria of Adverse Effect;
  - 5. Request from the Applicant copies of any documents regarding the planning or construction of the Facility, including correspondence, memoranda, and agreements;
  - 6. If the Facility was constructed prior to full compliance with the requirements of Section 106, request from the Applicant an explanation for such failure, and possible measures that can be taken to mitigate any resulting adverse effects on Historic Properties.
- D. If the Commission concludes that there is a probable violation of Section 110(k) (i.e., that "with intent to avoid the requirements of Section 106, [an Applicant] has intentionally significantly adversely affected a Historic Property"), the Commission shall notify the Applicant and forward a copy of the documentation set forth in Section X.C. to the Council and, as appropriate,

the SHPO/THPO and other consulting parties, along with the Commission's opinion regarding the probable violation of Section 110(k). The Commission will consider the views of the consulting parties in determining a resolution, which may include negotiating a Memorandum of Agreement (MOA) that will resolve any adverse effects. The Commission, SHPO/THPO, Council, and Applicant shall sign the MOA to evidence acceptance of the mitigation plan and conclusion of the Section 106 review process.

- E. Nothing in Section X or any other provision of this Agreement shall preclude the Commission from continuing or instituting enforcement proceedings under the Communications Act and its rules against an Applicant that has constructed a Facility prior to completing required review under this Agreement. Sanctions for violations of the Commission's rules may include any sanctions allowed under the Communications Act and the Commission's rules.
- F. The Commission shall provide copies of all concluding reports or orders for all Section 110(k) investigations conducted by the Commission to the original complainant, the Applicant, the relevant local government, and other consulting parties.
- G. Facilities that are excluded from Section 106 review pursuant to the Collocation Agreement or Section III of this Agreement are not subject to review under this provision. Any parties who allege that such Facilities have violated Section 110(k) should notify the Commission in accordance with the provisions of Section XI, Public Comments and Objections.

#### XI. PUBLIC COMMENTS AND OBJECTIONS

Any member of the public may notify the Commission of concerns it has regarding the application of this Nationwide Agreement within a State or with regard to the review of individual Undertakings covered or excluded under the terms of this Agreement. Comments related to telecommunications activities shall be directed to the Wireless Telecommunications Bureau and those related to broadcast facilities to the Media Bureau. The Commission will consider public comments and following consultation with the SHPO/THPO, potentially affected Indian tribes and NHOs, or Council, where appropriate, take appropriate actions. The Commission shall notify the objector of the outcome of its actions.

#### XII. AMENDMENTS

The signatories may propose modifications or other amendments to this Nationwide Agreement. Any amendment to this Agreement shall be subject to appropriate public notice and comment and shall be signed by the Commission, the Council, and the Conference.

### XIII. TERMINATION

- A. Any signatory to this Nationwide Agreement may request termination by written notice to the other parties. Within sixty (60) days following receipt of a written request for termination from a signatory, all other signatories shall discuss the basis for the termination request and seek agreement on amendments or other actions that would avoid termination.
- B. In the event that this Agreement is terminated, the Commission and all Applicants shall comply with the requirements of 36 C.F.R. Part 800.

### XIV. ANNUAL REVIEW

The signatories to this Nationwide Agreement will meet annually on or about the anniversary of the effective date of the Agreement to discuss the effectiveness of this Agreement, including any issues related to improper implementation, and to discuss any potential amendments that would improve the effectiveness of this Agreement.

### XV. RESERVATION OF RIGHTS

Neither execution of this Agreement, nor implementation of or compliance with any term herein, shall operate in any way as a waiver by any party hereto, or by any person or entity complying herewith or affected hereby, of a right to assert in any court of law any claim, argument or defense regarding the validity or interpretation of any provision of the NHPA or its implementing regulations contained in 36 C.F.R. Part 800.

### XVI. SEVERABILITY

If any section, subsection, paragraph, sentence, clause or phrase in this Agreement is, for any reason, held to be unconstitutional or invalid or ineffective, such decision shall not affect the validity or effectiveness of the remaining portions of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officers as of the day and year first written above.

FEDERAL COMMUNICATIONS COMMISSION

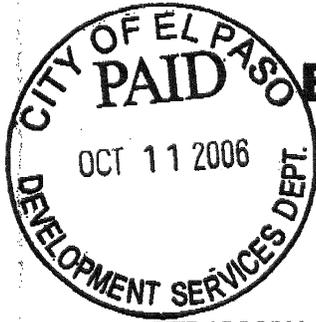
\_\_\_\_\_ Date \_\_\_\_\_  
Chairman

ADVISORY COUNCIL ON HISTORIC PRESERVATION

\_\_\_\_\_ Date \_\_\_\_\_  
Chairman

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

\_\_\_\_\_ Date \_\_\_\_\_  
President



# BUILDING PERMIT

PERMIT NO.: **BLD06-04755**  
ISSUED: **10/11/2006**  
APPLIED: **6/27/2006**  
EXPIRES: **4/11/2007**

SITE ADDRESS: **2219 N PIEDRAS ST**  
ASSESSOR'S PARCEL NO.: **H45399910704300**  
PROJECT DESCRIPTION: **revised letter from planning received & plans routed to frank 9-21-06**  
**TELECOMMUNICATIONS SITE 90 FT MONOPOLE WITH EQUIPMENT**

|                                                                   |                                                                                      |
|-------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| <u>OWNER/APPLICANT</u><br>BALLESTEROS, ALONZO R<br>2921 FIERRO DR | <u>CONTRACTOR</u><br>DW TOWER<br>2420 COMANCHE NE. SUITE H-1<br>ALBUQUERQUE NM 87107 |
|-------------------------------------------------------------------|--------------------------------------------------------------------------------------|

TYPE OF WORK: New Commercial  
TYPE OF USE: Towers & Related Structures  
CENSUS CAT.: New Structures Other than Buildin  
ZONING: C2 Commercial District

AREA: VALUE: \$60,000.00

|              |    |                          |    |
|--------------|----|--------------------------|----|
| LOT:         | sf | <u>REQUIRED SETBACK:</u> |    |
| 1ST FLR:     | sf | FRONT:                   | ft |
| 2ND FLR:     | sf | SIDE 1:                  | ft |
| GAR/CARPORT: | sf | SIDE 2:                  | ft |
| BASEMENT:    | sf | REAR:                    | ft |
| OTHER:       | sf |                          |    |

OCCUPANCY GROUPS:

|   |   |
|---|---|
| 1 | 2 |
| 3 | 4 |

CONSTRUCTION TYPE:

|   |   |
|---|---|
| 1 | 2 |
| 3 | 4 |

NUMBER OF UNITS:

STORIES:

BUILDING HEIGHT: ft

REQUIRED PARKING:

TOTAL PARKING:

HANDICAPPED:

\*\*\* NOTICE \*\*\*

- This permit is issued in accordance with the provisions of Chapter 18.02 of the Municipal Code and the applicant, in accepting it, obligates himself to comply fully with all the provisions of the Municipal Code and other applicable codes and ordinances insofar as they affect this permit including, but not limited to, calling for all required inspections.
- This building permit or a copy thereof shall be kept on the site of work until completion of the project.

| Fees   |     |           |        |
|--------|-----|-----------|--------|
| Type   | By  | Date      | Amount |
| PRMT   | MPN | 10/6/2006 | 575.00 |
| Total: |     |           | 575.00 |

I hereby acknowledge that I have read this permit and state that the above information is correct, and agree to comply with all City, State and Federal Laws regulating activities covered by this permit.

Issued by

Contractor's, Owner's or Agent's Signature

**A Minimum 24 Hour Notice Is Required For All Inspections**

1. Original 2. Customer 3. Cashier 4. Office

541-4600 or 541-4700

# Raymond Cultural Resources Consulting, LLC

14113 Nambé NE  
Albuquerque, New Mexico 87123  
505-294-1414

July 10, 2006

City of El Paso  
2 Civic Center Plaza  
El Paso, TX 79901  
Attn: Planning, Research and Development Department

**Re: Proposed Telecommunications Facility (cell-tower) at 2219 North Piedras in El Paso, Texas**

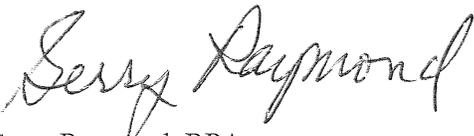
Dear Sir:

T-Mobile, USA has proposed installation of a wireless-telecommunications facility on private property at 2219 North Piedras Street in El Paso, Texas 79930. The location for the proposed 75-foot high monopole wireless-telecommunications facility is on private property near the southwest quadrant of the intersection of North Piedras Street and Altura Avenue. The lease area for the tower and associated equipment is an area 30 feet east-west by 20 feet north-south in the southeast corner of the Mazzo Automotive Repair property. The lease area is setback 15 feet from the edge of North Piedras Street and abuts the east-west alley that runs between N. Piedras Street and Elm Street. Associated structures will include base transceiver station (BTS) cabinets located in the lease area near the base of the tower.

Gerry Raymond, archaeological consultant, is conducting a cultural resource investigation of the project area to fulfill the responsibility of the Federal Communications Commission (FCC) to meet the requirements of the National Historic Preservation Act. The survey findings will be presented to the Texas Historical Commission for a determination of effect. A review of the Texas Historical Commission records and atlas reflects that the proposed tower is not in a National Register Historic District or site.

The FCC Nationwide Programmatic Agreement requires that we contact the local jurisdiction regarding the effect of the tower location upon cultural resources, or for any other comments or input. The City of El Paso is invited to become a consulting party pursuant to Section V. A of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties, by the Federal Communications Commission dated September 2004. In addition to this request for consultation, T-Mobile will follow city zoning requirements and permitting procedures. If you have any questions, please contact Gerry Raymond at the above address.

Sincerely,



Gerry Raymond, RPA  
On behalf of the FCC and T-Mobile

JOHN COOK  
MAYOR

JOYCE WILSON  
CITY MANAGER

GEORGE G. SARMIENTO, AICP  
DEPUTY DIRECTOR



CITY COUNCIL  
ANN MORGAN LILLY, DISTRICT 1  
SUSANNAH M. BYRD, DISTRICT 2  
J. ALEXANDRO LOZANO, DISTRICT 3  
MELINA CASTRO, DISTRICT 4  
PRESI ORTEGA, JR., DISTRICT 5  
EDDIE HOLGUIN JR., DISTRICT 6  
STEVE ORTEGA, DISTRICT 7  
BETO O'ROURKE, DISTRICT 8

DEVELOPMENT SERVICES DEPARTMENT  
PLANNING DIVISION  
May 24, 2006

T-Mobile  
Attn: Rick Ramirez  
4520 Montgomery Blvd NE Suite 5  
Albuquerque, NM 87109

Re: 2219 N. Piedras St  
A portion of Lots 18 and 19, Block 107, Third amended map of Highland Park Addition,  
El Paso, El Paso County, Texas

Dear Mr. Ramirez:

In reply to your request for a zoning verification regarding the above referenced property the following are our findings:

1. The property is zoned C-2 (Commercial)
2. The purpose of this district is to provide sufficient space in appropriate locations for retail and personal service uses and some commercial recreational uses, generally serving an area of several neighborhoods in the city.
3. There are no special contracts or conditions imposed on this property.
4. The following must accompany a request for a building permit:
  1. A detailed site plan showing the antenna support structure, antenna, and equipment in relation to the surroundings, including fencing, off-street parking and access from the antenna support site to the nearest public street.
  2. A verification letter that all required FAA and FCC approvals have been requested and that site-specific structural engineering and nonionizing electromagnetic radiation (NIER) reports are available on request from the applicant.
5. The applicant shall provide a six-foot tall fence or screening wall of other than chain-link fence around the base of an antenna support structure to provide for security. The gate which provides access to the antenna support structure shall remain locked at all times except when being used for access by maintenance personnel.
6. The El Paso City Code is available at: <http://ordlink.com/codes/el Paso/index.htm>

You may contact Mirian Spencer at (915) 541-4723 should you have any questions or require additional information.

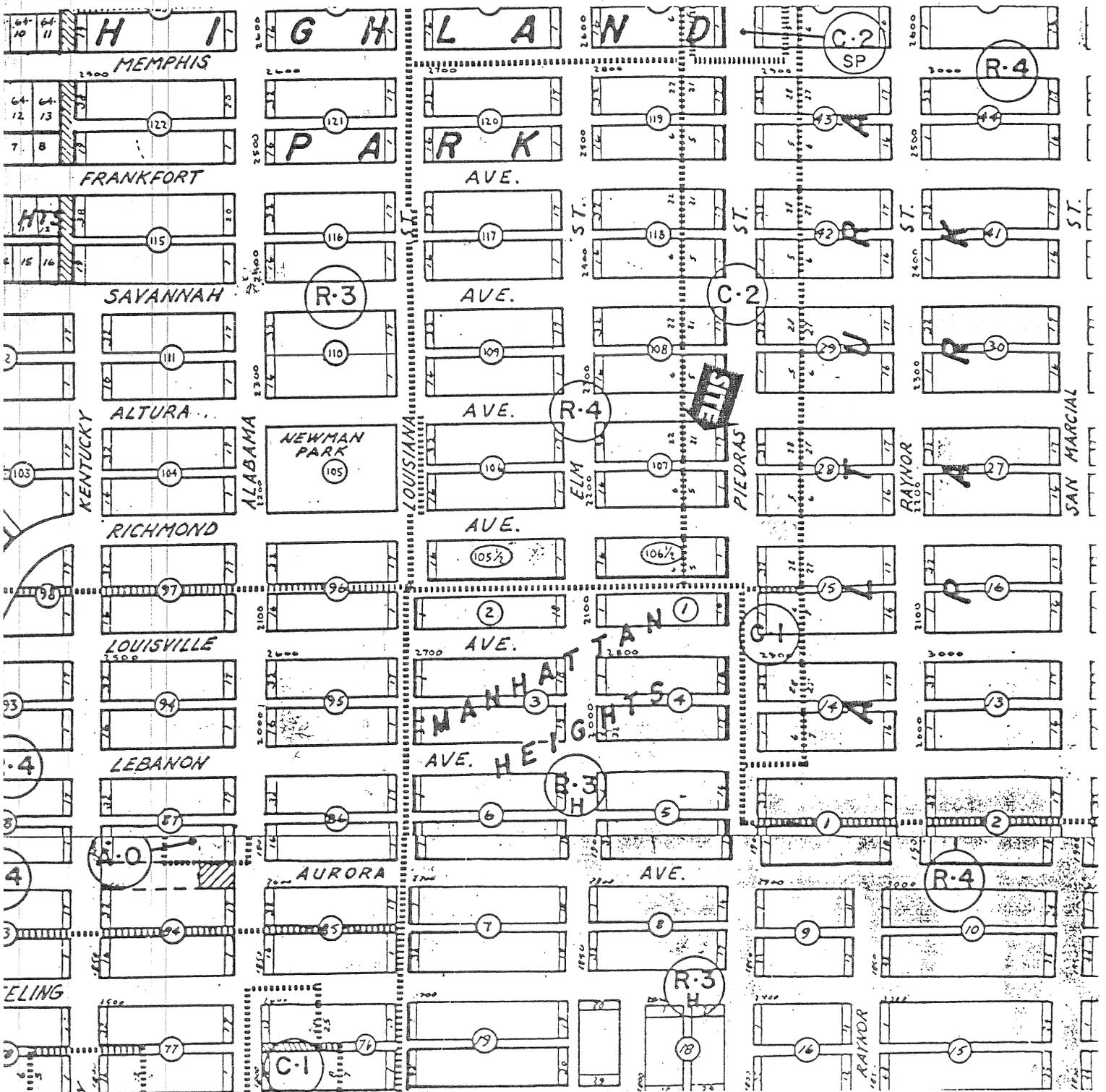
Sincerely,

Mirian Spencer, Urban Planner

2219 N. Piedras St.  
Albuquerque, NM  
05-118-00

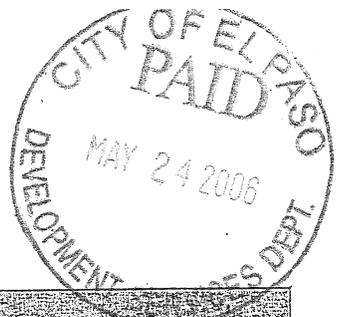
# ZONING MAP

Site Number: NM2435A  
Search Ring Name: Lebanon & Alabama  
Site Name: Mazzo Automotive





ZONING VERIFICATION APPLICATION  
 PLANNING, RESEARCH & DEVELOPMENT DEPARTMENT  
 CITY OF EL PASO, TEXAS



CONTACT INFORMATION

NAME: T-MOBILE / Rick Ramirez  
 ADDRESS: 4520 Montgomery Blvd. NE Ste 5 ZIP CODE: 87109  
 PHONE: 505-232-9003 FAX: 505-872-9252  
 E-MAIL ADDRESS: \_\_\_\_\_

PARCEL INFORMATION

STREET ADDRESS OR LOCATION: 2219 N. Piedras / NM 2435A MAZZO Automotive  
 PROPOSED USE: Telecommunications facility  
 LEGAL DESCRIPTION: portion of lots 18 + 19, Block 107, third amended map of Highland Park Addition

Note: If the legal description consists of portions of lots or blocks; or if a legal subdivision has not been recorded, a survey or written, sealed metes and bounds description may be required in order to process this application.

I AM REQUESTING THE FOLLOWING INFORMATION (CHECK ALL BOXES THAT APPLY)

- The zoning district designation for this property, including any zoning conditions, special contracts, or special permits for this property (\$22.90 fee for property with no zoning conditions, special contract, or special permit; \$45.70 fee for property with zoning conditions, special contract, or special permit).
- Permitted uses for this property. C-2
- Specific zoning request (additional fee of \$30.00 per each 1/2 hour of staff research may apply).

Note: For any information regarding this application, please contact the Planning, Research & Development Department at (915) 541-4024. For information regarding building permits, please contact the Building Permits & Inspections Department at (915) 541-4560.

SIGNATURE:  DATE: 5-12-06

\*\*OFFICE USE ONLY\*\*

APPLICATION NO. 05-148-06 RECEIVED DATE: 5/22/06  
 ACCEPTED BY: Miriam Spivey APPLICATION FEE \$ 22.90  
 FUND - 01101, DEPT ID - 99010335, ACCOUNT - 404126

**Rick Ramirez**

4520 Montgomery Blvd. NE, Ste. 5, Albuquerque, NM 87109, (505) 232-9003, Fax (505) 232-4898

---

May 12, 2006

Attn: Kim Forsythe  
Planning, Research & Development Department  
City of El Paso  
2 Civic Center Plaza,  
El Paso, TX 79901

RE: 2219 N. Piedras./T-Mobile NM02435A Mazzo Automotive  
Legal: a portion of Lots 18 & 19, Block 107, Third amended map of Highland Park Addition, (Vol. 13, Page 8, Real Property Records, El Paso County, Texas)

Attention: Kim Forsythe

Please review the attached zoning map and drawings indicating our proposed site location and advise if we are in accordance (subject to landscaping and paving requirements) with the required planning and zoning regulations (setbacks, use, etc.) in the City of El Paso. T-Mobile intends to lease an approximate 30'X17' area of ground space for the placement of a telecommunications facility consisting of a 80' pole along with related equipment. T-Mobile will meet the 1:1 setbacks from Residential to the west for an 80' pole. If you are in accordance with our proposal, please provide us with a "Zoning Verification Letter." I have included a check for \$22.90 payable to the City of El Paso. Please send the Zoning Verification Letter to:

Attn: Rick Ramirez  
4520 Montgomery Blvd. NE, Ste. 5  
Albuquerque, NM 87109

Should you have any questions, please call me at (505) 232-9003.

Sincerely,



Rick Ramirez  
Site Acquisition Consultant

JOHN COOK  
MAYOR

JOYCE WILSON  
CITY MANAGER

GEORGE G. SARMIENTO, AICP  
DEPUTY DIRECTOR



CITY COUNCIL  
ANN MORGAN LILLY, DISTRICT 1  
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DEVELOPMENT SERVICES DEPARTMENT  
PLANNING DIVISION

May 24, 2006

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You may contact Mirian Spencer at (915) 541-4723 should you have any questions or require additional information.

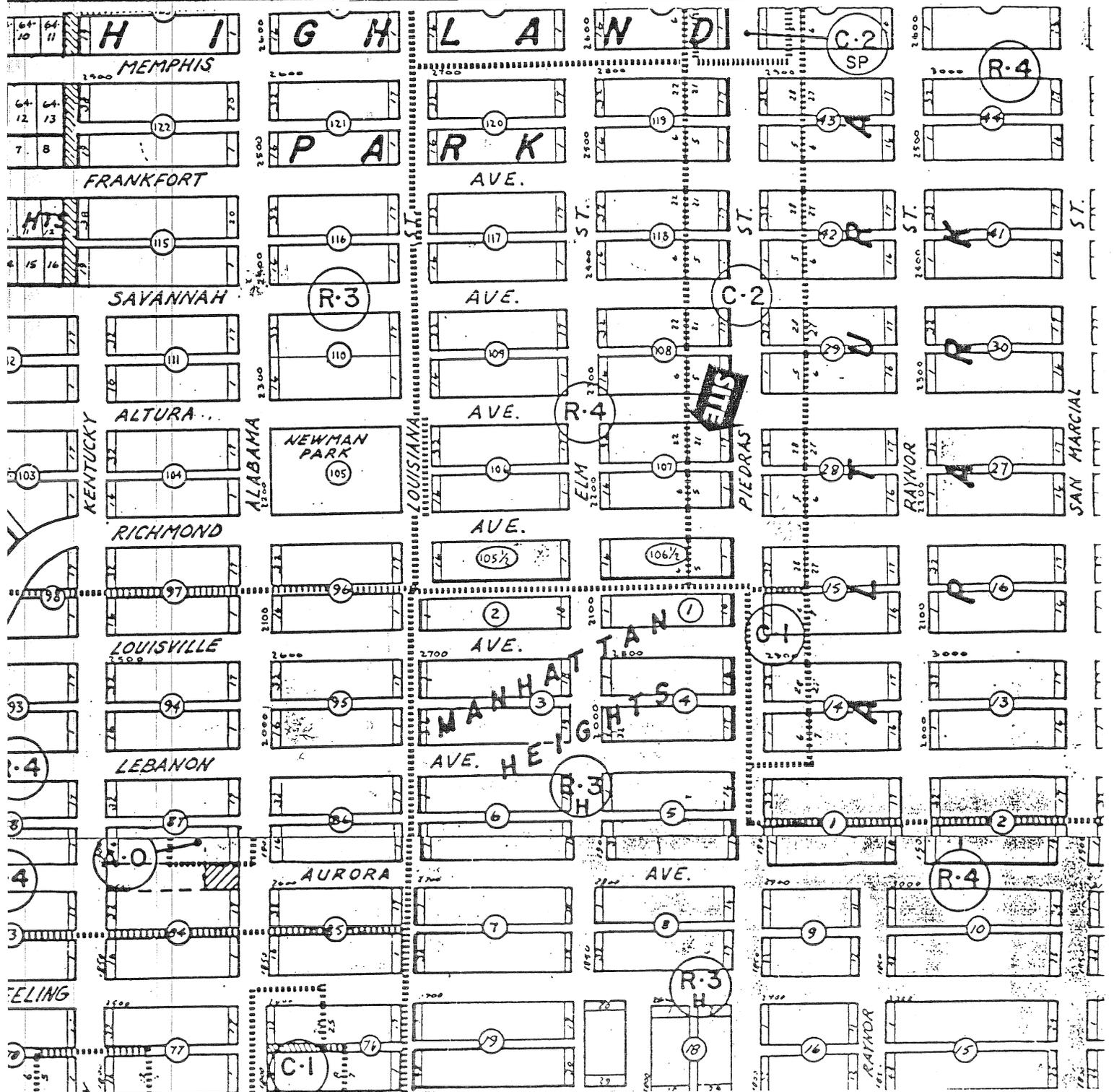
Sincerely,

Mirian Spencer, Urban Planner

2219 N. Piedras St.  
05-148-00

# ZONING MAP

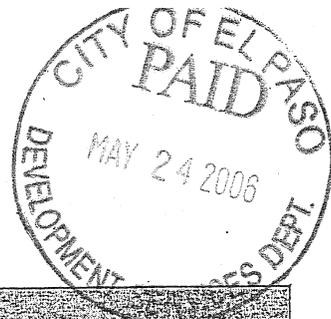
Site Number: NM2435A  
Search Ring Name: Lebanon & Alabama  
Site Name: Mazzo Automotive







ZONING VERIFICATION APPLICATION  
 PLANNING, RESEARCH & DEVELOPMENT DEPARTMENT  
 CITY OF EL PASO, TEXAS



CONTACT INFORMATION

NAME: T-MOBILE / Rick Ramirez  
 ADDRESS: 4520 Montgomery Blvd. NE Ste 5 ZIP CODE: 87109  
 PHONE: 505-232-9003 FAX: 505-872-9252  
 E-MAIL ADDRESS: \_\_\_\_\_

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Note: For any information regarding this application, please contact the Planning, Research & Development Department at (915) 541-4024. For information regarding building permits, please contact the Building Permits & Inspections Department at (915) 541-4560.

SIGNATURE: [Signature] DATE: 5-12-06

\*\*OFFICE USE ONLY\*\*

APPLICATION NO. 05-148-06  
 ACCEPTED BY: [Signature]

RECEIVED DATE: 5/22/06  
 APPLICATION FEE \$ 22.90

FUND - 01101, DEPT ID - 99010335, ACCOUNT - 404126

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4520 Montgomery Blvd. NE, Ste. 5, Albuquerque, NM 87109, (505) 232-9003, Fax (505) 232-4898

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Attn: Kim Forsythe  
Planning, Research & Development Department  
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2 Civic Center Plaza,  
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Should you have any questions, please call me at (505) 232-9003.

Sincerely,



Rick Ramirez  
Site Acquisition Consultant

### PUBLISHERS AFFIDAVIT

STATE OF TEXAS  
COUNTY OF EL PASO

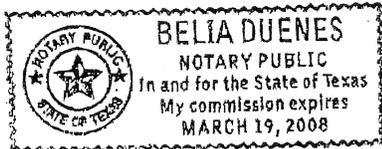
TETRO TECH EMInc.

Before me, a Notary Public in and for El Paso County, State of Texas, on this day personally appeared TERRIE CARTER who state CLASSIFIED SUPERVISOR upon oath that he is the \_\_\_\_\_ of the El Paso Times, a daily newspaper published in the City and County of El Paso, State of Texas, which is a newspaper of general circulation and which has been continuously and regularly published for the period of not less than one year in the said County of El Paso, and that he was such upon the dates herein mentioned:

That the LEGAL copy was published in the El Paso Times for the ONE DAY. The dates of such publication being as follows, to wit JULY 20, 2006

Subscribed and sworn to before me, Signed Belia Duenes

This the 20th day of JULY 2006  
Jennie A. Carter



Subject: Public Notification of Construction of New Cellular facilities  
As required by the Nationwide Programmatic Agreement for review of effects of historic properties for certain undertakings approved by the FCC, written notice is hereby being provided to the public. A copy of this public notification and any comments received will be included in the FCC (NT) submission packet, FCC Form 620, Section 5, Public Involvement. The period of public notification will last through July 28, 2006.  
Facility Locations and Descriptions:  
Proposed Facility NM 2435A - Mazzo  
2219 N. Piedras Street, El Paso, TX 79930-150 ft Monopole.  
Instruction on Submitting Comments:  
Please send comment in writing to:  
E. Monks  
4121 Indian School Road Suite 205  
Albuquerque, NM 87110  
Telephone # of Contact Person:  
(505-881-3188 (Ext 114))

106 Tracking Sheet

Date Received 7/12/2006

Tracking Number: 200611528

Project Name: T - Mobile

Project Description: Proposed 75' monopole tower @ 2219 North Piedras Street

Agency Name: Federal Communications Commission

Second Agency Name:

Jurisdiction: Federal

TAC Permit:

County: El Paso

Other Counties: 0

Date Received: 7/12/2006

Date Entered: 7/14/2006

Date Due: 8/11/2006

Date Responded: 8/2/06

Lead Reviewer  
Bob Brinkman

2nd Reviewer

3rd Reviewer

Reviewer Responses

Reviewer Codes

- >
- >
- >
- >
- >
- >

*a letter has been generated  
affected*

Sites

|              |                      |
|--------------|----------------------|
| Eligible     | <input type="text"/> |
| Ineligible   | <input type="text"/> |
| Undetermined | <input type="text"/> |

Structures

|            |                      |
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| Ineligible | <input type="text"/> |
| Eligible   | <input type="text"/> |

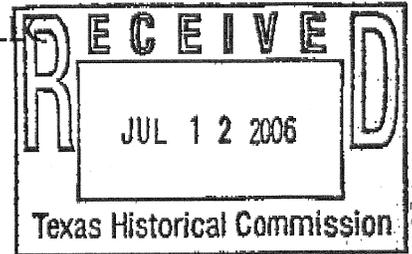
Acres

Notes

COMPLETED  
AUG 04 2006

NO HISTORIC  
PROPERTIES AFFECTED  
PROJECT MAY PROCEED

By RHB Raymond Cultural Resources Consulting, L.P.  
for F. Lawrence Oaks 14113 Nambé NE  
State Historic Preservation Officer Albuquerque, New Mexico 87123  
Date 2 Aug 2006 505-294-1414



July 11, 2006

Texas Historical Commission  
1511 Colorado  
Austin, TX 78701  
Attn: Charles Peveto

**Re: FCC-Regulated Wireless  
Communications Facility  
2219 North Piedras Street  
El Paso, TX 79930**

Dear Mr. Peveto,

Enclosed is a NT Submission Packet, including FCC Form 620 and associated attachments, for a FCC-regulated wireless communications facility for comment by the Texas SHPO, in respect to Section 106 of the National Preservation Act of 1966.

The proposed location for the facility is at 2219 North Piedras Street in El Paso, Texas near the intersection of N. Piedras and Altura Avenue. There are no archeological sites in the footprint of the proposed telecommunications facility and access, nor any previously recorded sites in the footprint of the facility and access.

There are two resources within the visual APE, one of which is listed on the National Register: 1) Manhattan Heights Historic District, El Paso, TX. THC Reference No. 80004107, Listed 1980. The north boundary of the Manhattan Heights Historic District is approximately 340 feet south of the proposed tower location and the district runs south, southeast, and southwest of the proposed tower location. The boundary for the district begins at the alley located between Richmond Avenue (the street south of Altura Ave) and Louisville Avenue.

The area in which the tower is located is about 340 feet north of the district boundary, and the area is mixed commercial and residential. No significant elements of the district were observed within 1000 feet of the proposed tower location. The upper portion of the tower will be in view from some points in the northern part of the district, however, the terrain slopes down to the south and east from the tower location, and the tower will not be visible in most areas of the district. The tower will be set-back sufficiently from North Piedras Street that it will not directly be in the view corridor along the street.

-not true

The mixed-use area in which the tower will be located has been heavily encroached by the urban infrastructure. Intrusions to the visual landscape are common in this area, including utility poles and lines and commercial signage along North Piedras and Altura Avenue and cell towers along the mountains in the background. Thus the tower is consistent with the existing urban setting. The viewshed of which the tower would be a part has low value for unity (visual coherence and compositional harmony of the viewscape considered as a whole), intactness (visual integrity of the built environment and its freedom from encroaching elements), and vividness (visual power of the visual components as they combine in visual patterns).

-not true

Not true

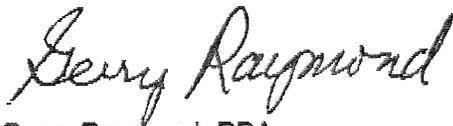
The district is eligible based upon its architecture, landscape architecture, and community planning (criterion "c"). The visual elements of this criterion of the district will not be diminished by the visual presence of the proposed tower that is about 340 feet beyond the boundary of the district. The installation of the tower will not diminish the district's integrity, nor will it alter any of the characteristics of the district that make it eligible for inclusion on the National Register.

2) One archaeological site is shown on the THC Atlas within a one-half mile radius of the proposed tower location as follows: 41EP551-No Key Site Card or site form was available-the site's eligibility to the NRHP is not known. This site is approximately 2,260 feet south-southeast of the proposed tower location and no apparent remains are visible at the UTM coordinate location for the site.

Based on the above evaluation and subject to the comment of the Texas Historical Commission, the criteria of no adverse effect have been applied to the undertaking.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Gerry Raymond".

Gerry Raymond, RPA

**NT SUBMISSION PACKET – FCC FORM 620**

**The NT Submission Packet is to be used only for the construction of new antenna support structures.** Antenna collocations that are subject to Section 106 review should be submitted using the Collocation ("CO") Submission Packet (FCC Form 621).

**General Instructions: NT Submission Packet**

Fill out the answers to Questions 1-5 on Form 620 and provide the requested attachments. Attachments should be numbered and provided in the order described below.

For ease of processing, provide the Applicant's Name, Applicant's Project Name, and Applicant's Project Number in the lower right hand corner of each page of Form 620 and attachments.<sup>3</sup>

**1. Applicant Information**

Full Legal Name of Applicant: T-Mobile, USA

Name and Title of Contact Person: Nick Romano, SAC Coordinator

Address of Contact Person (including Zip Code):  
4520 Montgomery Boulevard NE, Albuquerque, NM 87109

Phone: 505-232-9003 Fax: \_\_\_\_\_

E-mail address: Nicholas.Romano@T-Mobile.com

**2. Applicant's Consultant Information**

Full Legal Name of Applicant's Section 106 Consulting Firm:  
Gerry R. Raymond

Name of Principal Investigator: Gerry R. Raymond

Title of Principal Investigator: Principal Investigator

Investigator's Address: 14113 Nambe NE

<sup>3</sup> Some attachments may contain photos or maps on which this information can not be provided.

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

**NT SUBMISSION PACKET – FCC FORM 620**

City: Albuquerque State NM Zip Code 87123

Phone: 505-294-1414 Fax: \_\_\_\_\_

E-mail Address: raymond1414@msn.com

Does the Principal Investigator satisfy the Secretary of the Interior's Professional Qualification Standards?<sup>4</sup> YES / NO.

Areas in which the Principal Investigator meets the Secretary of the Interior's Professional Qualification Standards: Archaeology

Other "Secretary of the Interior qualified" staff who worked on the Submission Packet (provide name(s) as well as well as the area(s) in which they are qualified):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. Site Information**

a. Street Address of Site: 2219 North Piedras Street

City or Township: El Paso

County / Parish: El Paso State: TX Zip Code: 79930

b. Nearest Cross Roads: Darrington / Temperance Avenue

c. NAD 83 Latitude/Longitude coordinates (to tenth of a second):  
N 31° 47' 48.12"; W 106° 27' 42.48 "

<sup>4</sup> The Professional Qualification Standards are available on the cultural resources webpage of the National Park Service, Department of the Interior: <[http://www.cr.nps.gov/local-law/arch\\_stnds\\_9.htm](http://www.cr.nps.gov/local-law/arch_stnds_9.htm)>. The Nationwide Agreement requires use of Secretary-qualified professionals for identification and evaluation of historic properties within the APE for direct effects, and for assessment of effects. The Nationwide Agreement encourages, but does not require, use of Secretary-qualified professionals to identify historic properties within the APE for indirect effects. See Nationwide Agreement, §§ VI.D.1.d, VI.D.1.e, VI.D.2.b, VI.E.5.

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

NT SUBMISSION PACKET – FCC FORM 620

d. Proposed tower height above ground level:<sup>5</sup> 75 feet; 22.86 meters

80 foot

e. Tower type:

guyed lattice tower     self-supporting lattice     monopole

other (briefly describe tower) \_\_\_\_\_

**4. Project Status:**<sup>6</sup>

- a.  Construction not yet commenced;
- b.  Construction commenced on [date] \_\_\_\_\_; or,
- c.  Construction commenced on [date] \_\_\_\_\_ and was completed on [date] \_\_\_\_\_.

**5. Applicant's Determination of Effect:**

a. **Direct Effects** (check one):

- i.  No Historic Properties in Area of Potential Effects ("APE") for direct effects;
- ii.  "No effect" on Historic Properties in APE for direct effects;
- iii.  "No adverse effect" on Historic Properties in APE for direct effects;
- iv.  "Adverse effect" on one or more Historic Properties in APE for direct effects.

b. **Visual Effects** (check one):

- i.  No Historic Properties in Area of Potential Effects ("APE") for visual effects;
- ii.  "No effect" on Historic Properties in APE for visual effects;
- iii.  "No adverse effect" on Historic Properties in APE for visual effects;
- iv.  "Adverse effect" on one or more Historic Properties in APE for visual effects.

<sup>5</sup> Include top-mounted attachments such as lightning rods.

<sup>6</sup> Failure to provide the Submission Packet and complete the review process under Section 106 of the NHPA prior to beginning construction may violate Section 110(k) of the NHPA and the Commission's rules. See Section X of the Nationwide Agreement.

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

NT SUBMISSION PACKET – FCC FORM 620

Certification and Signature

I certify that all representations on this FCC Form 620 and the accompanying attachments are true, correct, and complete.

Gerry Raymond  
Signature

July 10, 2006  
Date

Gerry Raymond  
Printed Name

Principal Investigator  
Title

**WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, Section 312(a)(1) AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).**

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

**Attachment 1      Resume of Gerry Raymond**

Gerry Raymond is a Registered Professional Archaeologist and meets the Secretary of the Interior's Professional Qualification Standards for an archaeologist. A resume for Gerry Raymond has previously been furnished and is on file with the Texas Historical Commission.

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

**Attachment 2.****Additional Site Information**

The location for the proposed installation of the 75 feet high (22.86 meters) monopole wireless-telecommunications facility is on private property at 2219 North Piedras Street (79930) near the southwest quadrant of the intersection of North Piedras Street and Altura Avenue in El Paso, Texas. The lease area for the tower and associated equipment is an area 30 feet east-west by 20 feet north-south in the southeast corner of the Mazzo Automotive Repair property. The lease area is setback 15 feet from the edge of North Piedras Street and abuts the east-west alley that runs between N. Piedras Street and Elm Street. Associated structures will include base transceiver station (BTS) cabinets located in the lease area near the base of the tower.

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

**Attachment 3.**

**Tribal Consultation**

Tribal consultation was carried out through the Federal Communications Commission's Tower Construction Notification (TCN) e-mail system. The NOTICE OF ORGANIZATION(S) WHICH WERE SENT PROPOSED TOWER CONSTRUCTION NOTIFICATION INFORMATION was sent June 2, 2006. A copy of the notification is attached and reflects the tribes and pueblos notified regarding the proposed tower. The FCC Notification ID # for this project is 16514.

Follow-up letters were mailed on July 11, 2006 to the Wichita and Associated Tribes and Ysleta del Sur Pueblo, who did not respond after 30 days to the FCC's TCN. Referral to the FCC will be made for those tribes if no response is received regarding the project. The referral to the FCC completes T-Mobile, USA's involvement in the Native American consultation process.

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

**G J RAYMOND**

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**From:** <towernotifyinfo@fcc.gov>  
**To:** <raymond1414@msn.com>  
**Sent:** Friday, June 02, 2006 1:59 PM  
**Subject:** Proposed Tower Structure Info - Email ID #1144766

Dear Gerry R Raymond Mr,

Thank you for submitting a notification regarding your proposed structure via the Tower Construction Notification Application. Note that the FCC has assigned a unique Notification ID number for this proposed structure.

You will need to reference this Notification ID number when you update your project's Status with us. Below are the details you provided for the tower you have proposed to construct:

Notification Received: 06/02/2006

Notification ID: 16514  
Tower Owner Individual or Entity Name: T-Mobile, USA  
Consultant Name: Gerry R Raymond Mr

Street Address: 14113 Nambe Ave NE

City: Albuquerque  
State: NEW MEXICO  
Zip Code: 87123  
Phone: 505-294-1414  
Email: [raymond1414@msn.com](mailto:raymond1414@msn.com)

Structure Type: POLE - Any type of Pole  
Latitude: 31 deg 47 min 48 sec N  
Longitude: 106 deg 27 min 42 sec W  
Location Description: 2219 N. Piedras Street  
City: El Paso  
State: TEXAS  
County: EL PASO  
Ground Elevation: 1194.8 meters  
Support Structure: 22.9 meters above ground level  
Overall Structure: 22.9 meters above ground level  
Overall Height AMSL: 1217.7 meters above mean sea level

**G J RAYMOND**

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**From:** <lowernotifyinfo@fcc.gov>  
**To:** <raymond1414@msn.com>  
**Cc:** <kim.pristello@fcc.gov>; <diane.dupert@fcc.gov>  
**Sent:** Friday, June 09, 2006 1:00 AM  
**Subject:** NOTICE OF ORGANIZATION(S) WHICH WERE SENT PROPOSED TOWER CONSTRUCTION NOTIFICATION INFORMATION - Email ID #1148619

Dear Sir or Madam:

Thank you for using the Federal Communications Commission's (FCC) Tower Construction Notification System (TCNS). The purpose of this electronic mail message is to inform you that the following authorized persons were sent the information you provided through TCNS, which relates to your proposed antenna structure. The information was forwarded by the FCC to authorized TCNS users by electronic mail and/or regular mail (letter).

Persons who have received the information that you provided include leaders or their designees of federally-recognized American Indian Tribes, including Alaska Native Villages (collectively "Tribes"), Native Hawaiian Organizations (NHOs), and State Historic Preservation Officers (SHPOs). For your convenience in identifying the referenced Tribes and in making further contacts, the City and State of the Seat of Government for each Tribe and NHO, as well as the designated contact person, is included in the listing below. We note that Tribes may have Section 106 cultural interests in ancestral homelands or other locations that are far removed from their current Seat of Government. Pursuant to the Commission's rules as set forth in the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission (NPA), all Tribes and NHOs listed below must be afforded a reasonable opportunity to respond to this notification, consistent with the procedures set forth below, unless the proposed construction falls within an exclusion designated by the Tribe or NHO. (NPA, Section IV.F.4).

The information you provided was forwarded to the following Tribes and NHOs who have set their geographic preferences on TCNS. If the information you provided relates to a proposed antenna structure in the State of Alaska, the following list also includes Tribes located in the State of Alaska that have not specified their geographic preferences. For these Tribes and NHOs, if the Tribe or NHO does not respond within a reasonable time, you should make a reasonable effort at follow-up contact, unless the Tribe or NHO has agreed to different procedures (NPA, Section IV.F.5). In the event such a Tribe or NHO does not respond to a follow-up inquiry, or if a substantive or procedural disagreement arises between you and a Tribe or NHO, you must seek guidance from the Commission (NPA, Section IV.G). These procedures are further set forth in the FCC's Declaratory Ruling released on October 6, 2005 (FCC 05-176).

1. NAGPRA Coordinator - Neil Cloud - Southern Ute Tribe - Ignacio, CO - electronic mail and regular mail

Exclusions: Please send a copy of the Form 620 form for ALL proposed sites via regular mail to:

Neil B. Cloud, NAGPRA Coordinator, P.O. Box 737, Mail Stop #73, 116 Capote Drive, Ignacio, Colorado 81137

7/11/2006

2. Governor - Arturo Sinclair - Ysleta del Sur Pueblo - El Paso, TX - electronic mail

3. Project Assistant - Lee Wait - Comanche Nation - Lawton, OK - regular mail

Exclusions: If the Applicant receives no response from the Comanche Nation within 30 days after notification through TCNS, the Comanche Nation has no interest in participating in pre-construction review for the site. The Applicant, however, must notify the Comanche Nation in the event archaeological properties or human remains are discovered during construction, consistent with Section IX of the Nationwide Programmatic Agreement and applicable law.

4. Administrative Assistant - Louissa Riffel - Wichita and Affiliated Tribes - Anadarko, OK - electronic mail and regular mail

5. Environmental Director - Joshua Waffle - Tonkawa Tribe - Tonkawa, OK - electronic mail

6. Tribal Historic Preservation Officer - Holly Houghten - Mescalero Apache Tribe - Mescalero, NM - electronic mail and regular mail

Exclusions: We do not wish to review towers that are being placed upon existing buildings.

The information you provided was also forwarded to the additional Tribes and NHOs listed below. These Tribes and NHOs have NOT set their geographic preferences on TCNS, and therefore they are currently receiving tower notifications for the entire United States. For these Tribes and NHOs, you are required to use reasonable and good faith efforts to determine if the Tribe or NHO may attach religious and cultural significance to historic properties that may be affected by its proposed undertaking. Such efforts may include, but are not limited to, seeking information from the relevant SHPO or THPO, Indian Tribes, state agencies, the U.S. Bureau of Indian Affairs, or, where applicable, any federal agency with land holdings within the state (NPA, Section IV.B). If after such reasonable and good faith efforts, you determine that a Tribe or NHO may attach religious and cultural significance to historic properties in the area and the Tribe or NHO does not respond to TCNS notification within a reasonable time, you should make a reasonable effort to follow up, and must seek guidance from the Commission in the event of continued non-response or in the event of a procedural or substantive disagreement. If you determine that the Tribe or NHO is unlikely to attach religious and cultural significance to historic properties within the area, you do not need to take further action unless the Tribe or NHO indicates an interest in the proposed construction or other evidence of potential interest comes to your attention.

None

The information you provided was also forwarded to the following SHPOs in the State in which you

propose to construct and neighboring States. The information was provided to these SHPOs as a courtesy for their information and planning. You need make no effort at this time to follow up with any SHPO that does not respond to this notification. Prior to construction, you must provide the SHPO of the State in which you propose to construct (or the Tribal Historic Preservation Officer, if the project will be located on certain Tribal lands), with a Submission Packet pursuant to Section VII.A of the NPA.

7. SHPO - Cathie Matthews - Department of Arkansas Heritage - Little Rock, AR - electronic mail

8. Deputy SHPO - Ken Grunewald - Department of Arkansas Heritage - Little Rock, AR - electronic mail

9. SHPO - Katherine Slick - Historic Preservation Div, Ofc of Cultural Affairs - Santa Fe, NM - electronic mail

10. Deputy SHPO - Janet Biella - Historic Preservation Div, Ofc of Cultural Affairs - Santa Fe, NM - electronic mail

11. Deputy SHPO - Dorothy Victor - Historic Preservation Div, Ofc of Cultural Affairs - Santa Fe, NM - electronic mail

12. SHPO - Bob Blackburn - Oklahoma Historical Society - Oklahoma City, OK - regular mail

13. SHPO - Lawrence Oaks - Texas Historical Commission - Austin, TX - electronic mail and regular mail

14. Deputy SHPO - Terry Colley - Texas Historical Commission - Austin, TX - electronic mail

15. Dir Architecture Div - Stanley Graves - Texas Historical Commission - Austin, TX - electronic mail

16. Dir Antiquities Prot - James Bruseth - Texas Historical Commission - Austin, TX - electronic mail

"Exclusions" above set forth language provided by the Tribe, NHO, or SHPO. These exclusions may indicate types of tower notifications that the Tribe, NHO, or SHPO does not wish to review. TCNS automatically forwards all notifications to all Tribes, NHOs, and SHPOs that have an expressed interest in the geographic area of a proposal, as well as Tribes and NHOs that have not limited their geographic areas of interest. However, if a proposal falls within a designated exclusion, you need not expect any response and need not pursue any additional process with that Tribe, NHO, or SHPO. Exclusions may also set forth policies or procedures of a particular Tribe, NHO, or SHPO (for example, types of information that a Tribe routinely requests, or a policy that no response within 30 days indicates no

interest in participating in pre-construction review).

If you are proposing to construct a facility in the State of Alaska, you should contact Commission staff for guidance regarding your obligations in the event that Tribes do not respond to this notification within a reasonable time.

Please be advised that the FCC cannot guarantee that the contact(s) listed above opened and reviewed an electronic or regular mail notification. The following information relating to the proposed tower was forwarded to the person(s) listed above:

Notification Received: 06/02/2006  
Notification ID: 16514  
Tower Owner Individual or Entity Name: T-Mobile, USA  
Consultant Name: Gerry R Raymond Mr

Street Address: 14113 Nambe Ave NE  
City: Albuquerque  
State: NEW MEXICO  
Zip Code: 87123  
Phone: 505-294-1414  
Email: [raymond1414@msn.com](mailto:raymond1414@msn.com)  
Structure Type: POLE - Any type of Pole  
Latitude: 31 deg 47 min 48.0 sec N  
Longitude: 106 deg 27 min 42.0 sec W  
Location Description: 2219 N. Piedras Street  
City: El Paso  
State: TEXAS  
County: EL PASO  
Ground Elevation: 1194.8 meters  
Support Structure: 22.9 meters above ground level  
Overall Structure: 22.9 meters above ground level  
Overall Height AMSL: 1217.7 meters above mean sea level

If you have any questions or comments regarding this notice, please contact the FCC using the electronic mail form located on the FCC's website at:

<http://wireless.fcc.gov/outreach/notification/contact-fcc.html>.

You may also call the FCC Support Center at (877) 480-3201 (TTY 717-338-2824). Hours are from 8 a.m. to 7:00 p.m. Eastern Time, Monday through Friday (except Federal holidays). To provide quality service and ensure security, all telephone calls are recorded.

Thank you,  
Federal Communications Commission

**G J RAYMOND**

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**From:** <towernotifyinfo@fcc.gov>  
**To:** <raymond1414@msn.com>  
**Cc:** <towernotifyinfo@fcc.gov>  
**Sent:** Wednesday, June 28, 2006 2:23 PM  
**Subject:** Reply to Proposed Tower Structure (Notification ID #16514) - Email ID #1188267

Dear Gerry R Raymond Mr,

Thank you for using the Federal Communications Commission's (FCC) Tower Construction Notification System (TCNS). The purpose of this email is to inform you that an authorized user of the TCNS has replied to a proposed tower construction notification that you had submitted through the TCNS.

The following message has been sent to you from Tribal Historic Preservation Officer, Holly Houghten in reference to Notification ID #16514:

We have no interest in this site. However, if the Applicant discovers archaeological remains or resources during construction, the Applicant should immediately stop construction and notify the FCC and the Tribe, pursuant to 47 C.F.R Sec. 1.1312 of the Commission's rules.

For your convenience, the information you submitted for this notification is detailed below.

Notification Received: 06/02/2006  
Notification ID: 16514  
Tower Owner Individual or Entity Name: T-Mobile, USA  
Consultant Name: Gerry R Raymond Mr

Street Address: 14113 Nambe Ave NE  
City: Albuquerque  
State: NEW MEXICO  
Zip Code: 87123  
Phone: 505-294-1414  
Email: [raymond1414@msn.com](mailto:raymond1414@msn.com)  
Structure Type: POLE - Any type of Pole  
Latitude: 31 deg 47 min 48.0 sec N  
Longitude: 106 deg 27 min 42.0 sec W  
Location Description: 2219 N. Piedras Street  
City: El Paso  
State: TEXAS  
County: EL PASO  
Ground Elevation: 1194.8 meters  
Support Structure: 22.9 meters above ground level  
Overall Structure: 22.9 meters above ground level  
Overall Height AMSL: 1217.7 meters above mean sea level

7/11/2006

**G J RAYMOND**

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**From:** <towernotifyinfo@fcc.gov>  
**To:** <raymond1414@msn.com>  
**Cc:** <towernotifyinfo@fcc.gov>  
**Sent:** Tuesday, June 13, 2006 12:38 PM  
**Subject:** Reply to Proposed Tower Structure (Notification ID #16514) - Email ID #1157296

Dear Gerry R Raymond Mr,

Thank you for using the Federal Communications Commission's (FCC) Tower Construction Notification System (TCNS). The purpose of this email is to inform you that an authorized user of the TCNS has replied to a proposed tower construction notification that you had submitted through the TCNS.

The following message has been sent to you from Project Assistant, Lee K Wait in reference to Notification ID #16514:

At this time, the Comanche Nation has no immediate concerns or issues regarding the project; however, please keep us informed of the project progress. We also would like to receive any archaeological reports and findings for the project area.

If in the process of the project human remains or archaeological items are discovered, we request that you immediately cease the project work and notify us so that we may discuss appropriate disposition with you and the other Tribal Nations that may be affected by such discoveries.

We look forward to your reports as activities proceed. If you need to contact the NAGPRA office, you can reach us by phoning 580-355-2250 or by emailing [lelainwait@hotmail.com](mailto:lelainwait@hotmail.com).

For your convenience, the information you submitted for this notification is detailed below.

Notification Received: 06/02/2006  
Notification ID: 16514  
Tower Owner Individual or Entity Name: T-Mobile, USA  
Consultant Name: Gerry R Raymond Mr

Street Address: 14113 Nambe Ave NE  
City: Albuquerque  
State: NEW MEXICO  
Zip Code: 87123  
Phone: 505-294-1414  
Email: [raymond1414@msn.com](mailto:raymond1414@msn.com)  
Structure Type: POLE - Any type of Pole  
Latitude: 31 deg 47 min 48.0 sec N  
Longitude: 106 deg 27 min 42.0 sec W  
Location Description: 2219 N. Piedras Street  
City: El Paso  
State: TEXAS

7/11/2006

County: EL PASO

Ground Elevation: 1194.8 meters

Support Structure: 22.9 meters above ground level

Overall Structure: 22.9 meters above ground level

Overall Height AMSL: 1217.7 meters above mean sea level

**G J RAYMOND**

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**From:** <towernotifyinfo@fcc.gov>  
**To:** <raymond1414@msn.com>  
**Cc:** <towernotifyinfo@fcc.gov>; <jwaffle@tonkawatribe.com>  
**Sent:** Monday, June 12, 2006 2:17 PM  
**Subject:** Reply to Proposed Tower Structure (Notification ID #16514) - Email ID #1157070

Dear Gerry R Raymond Mr,

Thank you for using the Federal Communications Commission's (FCC) Tower Construction Notification System (TCNS). The purpose of this email is to inform you that an authorized user of the TCNS has replied to a proposed tower construction notification that you had submitted through the TCNS.

The following message has been sent to you from Environmental Director, Joshua Waffle in reference to Notification ID #16514:

The following site(s) have been reviewed and to date (Monday, June 12, 2006) with current resources, the Tonkawa Tribe has no known burial sites of the Tonkawa Indians. If any remains or artifacts are discovered please contact the appropriate Agencies and our Tribal Facilities immediately. If the Tonkawa Tribes databases change in regards to the statement in this letter, a Tribal Representative will contact you.

Respectfully,  
Joshua Waffle  
Environmental Director Tonkawa Tribe  
Ph 580 628 7022  
Fx 580 628 2113  
[jwaffle@tonkawatribe.com](mailto:jwaffle@tonkawatribe.com)

For your convenience, the information you submitted for this notification is detailed below.

Notification Received: 06/02/2006  
Notification ID: 16514  
Tower Owner Individual or Entity Name: T-Mobile, USA  
Consultant Name: Gerry R Raymond Mr

Street Address: 14113 Nambe Ave NE  
City: Albuquerque  
State: NEW MEXICO  
Zip Code: 87123  
Phone: 505-294-1414  
Email: [raymond1414@msn.com](mailto:raymond1414@msn.com)  
Structure Type: POLE - Any type of Pole  
Latitude: 31 deg 47 min 48.0 sec N  
Longitude: 106 deg 27 min 42.0 sec W  
Location Description: 2219 N. Piedras Street  
City: El Paso

7/11/2006

State: TEXAS  
County: EL PASO  
Ground Elevation: 1194.8 meters  
Support Structure: 22.9 meters above ground level  
Overall Structure: 22.9 meters above ground level  
Overall Height AMSL: 1217.7 meters above mean sea level

**G J RAYMOND**

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**From:** <towernotifyinfo@fcc.gov>  
**To:** <raymond1414@msn.com>  
**Cc:** <towernotifyinfo@fcc.gov>; <topazzkat\_sno@yahoo.com>  
**Sent:** Wednesday, June 07, 2006 9:33 AM  
**Subject:** Reply to Proposed Tower Structure (Notification ID #16514) - Email ID #1151087

Dear Gerry R Raymond Mr,

Thank you for using the Federal Communications Commission's (FCC) Tower Construction Notification System (TCNS). The purpose of this email is to inform you that an authorized user of the TCNS has replied to a proposed tower construction notification that you had submitted through the TCNS.

The following message has been sent to you from NAGPRA Coordinator, Neil B Cloud in reference to Notification ID #16514:

If you have not done so already, please send the Southern Ute Tribe a form 620 or form 621. Please fax to the Southern Ute Tribe, attention NAGPRA Coordinator at 970-563-4823. Please mention the TCNS # on your fax. The Southern Ute Tribe will respond to you AFTER receiving this form. THANKS!

For your convenience, the information you submitted for this notification is detailed below.

Notification Received: 06/02/2006  
Notification ID: 16514  
Tower Owner Individual or Entity Name: T-Mobile, USA  
Consultant Name: Gerry R Raymond Mr

Street Address: 14113 Nambe Ave NE  
City: Albuquerque  
State: NEW MEXICO  
Zip Code: 87123  
Phone: 505-294-1414  
Email: [raymond1414@msn.com](mailto:raymond1414@msn.com)  
Structure Type: POLE - Any type of Pole  
Latitude: 31 deg 47 min 48.0 sec N  
Longitude: 106 deg 27 min 42.0 sec W  
Location Description: 2219 N. Piedras Street  
City: El Paso  
State: TEXAS  
County: EL PASO  
Ground Elevation: 1194.8 meters  
Support Structure: 22.9 meters above ground level  
Overall Structure: 22.9 meters above ground level  
Overall Height AMSL: 1217.7 meters above mean sea level

**Attachment 4.**

**Local Government Contact**

- a. A letter inviting the City of El Paso to become a consulting party was mailed July 10, 2006 (see attached copy).
- b. The tower requires a zoning permit, and the county will be contacted again, when the zoning application is submitted.

did not send letter to contact  
for the Certified Local  
Government

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

# Raymond Cultural Resources Consulting, LLC

14113 Nambe NE  
Albuquerque, New Mexico 87123  
505-294-1414

July 10, 2006

City of El Paso  
2 Civic Center Plaza  
El Paso, TX 79901  
Attn: Planning, Research and Development Department

**Re: Proposed Telecommunications Facility (cell-tower) at 2219 North Piedras in El Paso, Texas**

Dear Sir:

T-Mobile, USA has proposed installation of a wireless-telecommunications facility on private property at 2219 North Piedras Street in El Paso, Texas 79930. The location for the proposed 75-foot high monopole wireless-telecommunications facility is on private property near the southwest quadrant of the intersection of North Piedras Street and Altura Avenue. The lease area for the tower and associated equipment is an area 30 feet east-west by 20 feet north-south in the southeast corner of the Mazzo Automotive Repair property. The lease area is setback 15 feet from the edge of North Piedras Street and abuts the east-west alley that runs between N. Piedras Street and Elm Street. Associated structures will include base transceiver station (BTS) cabinets located in the lease area near the base of the tower.

Gerry Raymond, archaeological consultant, is conducting a cultural resource investigation of the project area to fulfill the responsibility of the Federal Communications Commission (FCC) to meet the requirements of the National Historic Preservation Act. The survey findings will be presented to the Texas Historical Commission for a determination of effect. A review of the Texas Historical Commission records and atlas reflects that the proposed tower is not in a National Register Historic District or site.

The FCC Nationwide Programmatic Agreement requires that we contact the local jurisdiction regarding the effect of the tower location upon cultural resources, or for any other comments or input. The City of El Paso is invited to become a consulting party pursuant to Section V. A of the Nationwide Programmatic Agreement for Review of Effects on Historic Properties, by the Federal Communications Commission dated September 2004. In addition to this request for consultation, T-Mobile will follow city zoning requirements and permitting procedures. If you have any questions, please contact Gerry Raymond at the above address.

Sincerely,



Gerry Raymond, RPA  
On behalf of the FCC and T-Mobile

**Attachment 5.**

**Public Involvement**

Public involvement will be conducted during the application and review process for the City of El Paso zoning permit.

No public involvement

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

**Attachment 6.**

**Additional Consulting Parties**

There are currently no additional consulting parties.

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

**Attachment 7.**

**Areas of Potential Effect**

- a. APE for direct effects – The permanent tower and equipment will be limited to an area 30 feet by 20 feet (9.1 meters by 6.1 meters) in the southeast corner of the fenced property. The south side of the lease area abuts a 15-foot wide alley that runs from N. Piedras to Elm Street. Access will be via an easement that runs 15 feet west from North Piedras Street to the proposed location. The APE for direct effects was defined as the lease area, the access area and the alleyway, an area 45 feet east-west by 35 feet north-south containing approximately 0.03 acre.
  
- a. APE for visual effects – A one-half mile radius of the tower site, as set out in the Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission dated September 2004.

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

**Attachment 8.**

**Properties Identified in Visual APE**

**8A. Properties Listed on the National Register:**

1) Manhattan Heights Historic District, El Paso, TX  
THC Reference No. 80004107, Listed 1980.

The north boundary of the Manhattan Heights Historic District is approximately 340 feet south of the proposed tower location and the district runs south, southeast, and southwest of the proposed tower location. The boundary for the district begins at the alley located between Richmond Avenue (the street south of Altura Ave) and Louisville Avenue.

One archaeological site is shown on the THC Atlas within a one-half mile radius of the proposed tower location as follows:

1) 41EP551-No Key Site Card or site form was available-the site's eligibility to the NRHP is not known. This site is approximately 2260 feet south-southeast of the proposed tower location and no apparent remains are visible at the UTM coordinate location for the site.

8B None

8C N/A

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

**Attachment 9 Historic Properties Identified in the APE for Direct Effects**

- a. Based on a search of the Texas Historical Commission's Texas Archeological Sites Atlas (Restricted Information Access) on June 2, 2006, no properties listed on the National Register of Historic Places, nor any previously recorded archaeological sites or buildings are located within the APE for Direct Effects.
- b. None
- c. A field inspection of the APE for Direct Effects was performed on June 3, 2006. The proposed location is in an urban area at an automobile repair business. The ground has been disturbed and is currently covered with gravel and fill material and an archeological survey was not appropriate for the 45-foot by 35-foot APE.

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

Attachment 10

Effects on Identified Properties

10 a. The Manhattan Heights Historic District is within the one-half mile visual APE radius of the proposed tower location as follows: the north boundary of the district is approximately 340 feet south of the proposed tower location and the district runs south, southeast, and southwest of the proposed tower location. The north boundary for the district runs along the alley located between Richmond Avenue (the street south of Altura Ave) and Louisville Ave.

The area in which the tower is located is about 340 feet north of the district boundary, and the area is mixed commercial and residential. No significant elements of the district were observed within 1000 feet of the proposed tower location. The upper portion of the tower will be in view from some points in the northern part of the district, however, the terrain slopes down to the south and east from the proposed tower location, and the tower will not be visible in most areas of the district. The tower will be set-back sufficiently from North Piedras Street that it will not directly be in the view corridor along the street.

not  
true

The mixed-use area in which the tower will be located has been heavily encroached by the urban infrastructure. Intrusions to the visual landscape are common in this area, including utility poles and lines and commercial signage along North Piedras and Altura Avenue and cell towers along the mountains in the background. Thus the tower is consistent with the existing urban setting. The viewshed of which the tower would be a part has low value for unity (visual coherence and compositional harmony of the viewscape considered as a whole), intactness (visual integrity of the built environment and its freedom from encroaching elements), and vividness (visual power of the visual components as they combine in visual patterns).

The district is eligible based upon its architecture, landscape architecture, and community planning (criterion "c"). The visual elements of this criterion of the district will not be diminished by the visual presence of the proposed tower that is about 340 feet beyond the boundary of the district. The installation of the tower will not diminish the district's integrity, nor will it alter any of the characteristics of the district that make it eligible for inclusion on the National Register.

One archaeological site is shown on the THC Atlas within a one-half mile radius of the proposed tower location as follows:

- 1) 41EP551-No Key Site Card or site form was available-the site's eligibility to the NRHP is not known. This site is approximately 2260 feet south-southeast of the proposed tower location and no apparent remains are visible at the UTM coordinate location for the site.

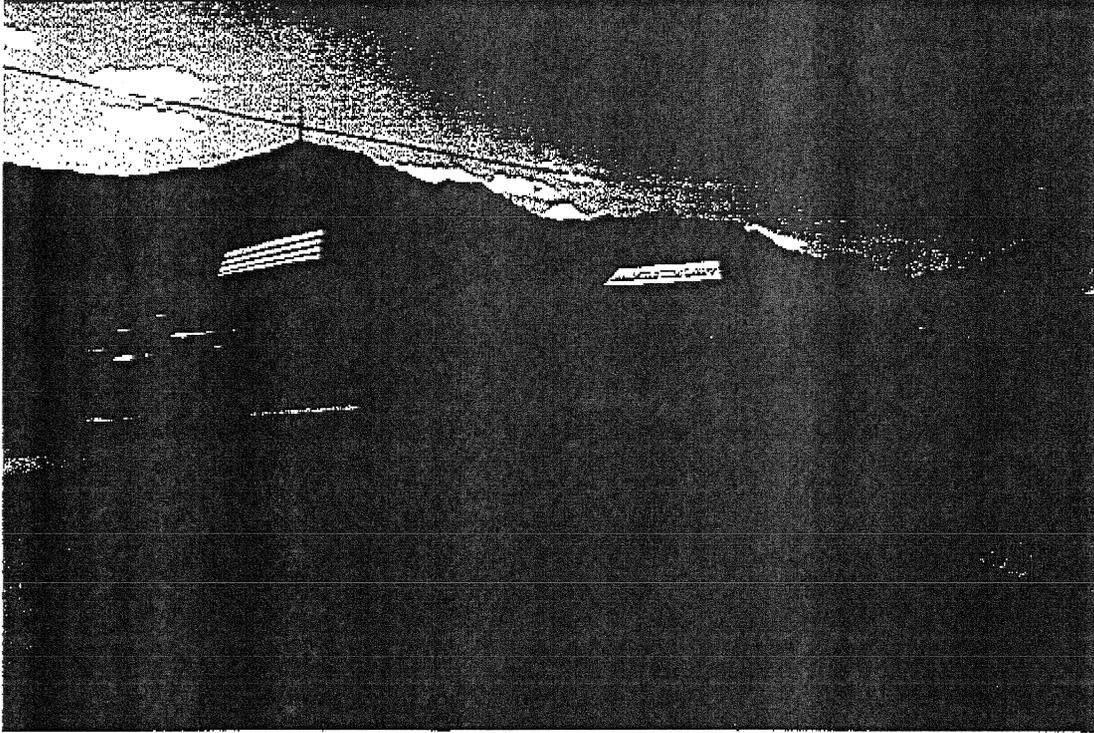
Based on the above evaluation and subject to the comment of the Texas Historical Commission, the criteria of no adverse effect have been applied to the undertaking.

10b. None

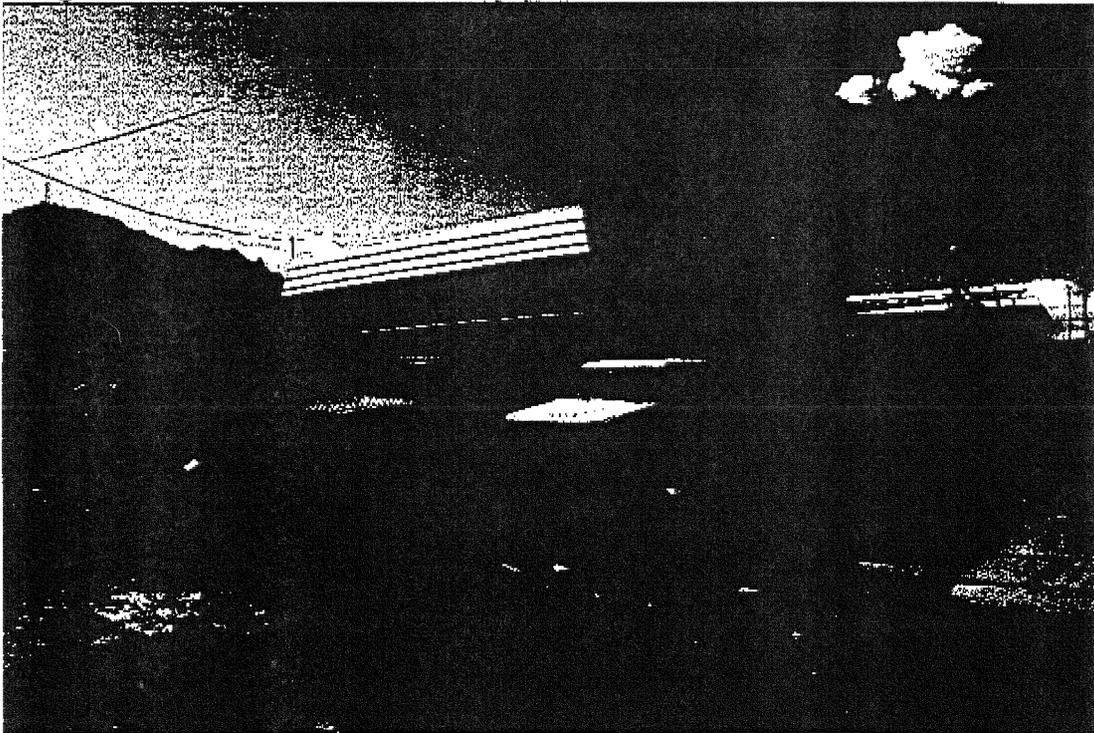
10c. N/A

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

**Attachment 11 Photographs – Mazzo Automotive, 2219 N. Piedras, El Paso, TX**



**View of Mazzo Automotive and proposed tower location in area of left of parked vehicles – facing northwest**



**View of proposed tower location in area at left side of parked vehicles – facing northwest.**

**Attachment 11 Photographs – Mazzo Automotive, 2219 N. Piedras, El Paso, TX  
View north from proposed location**

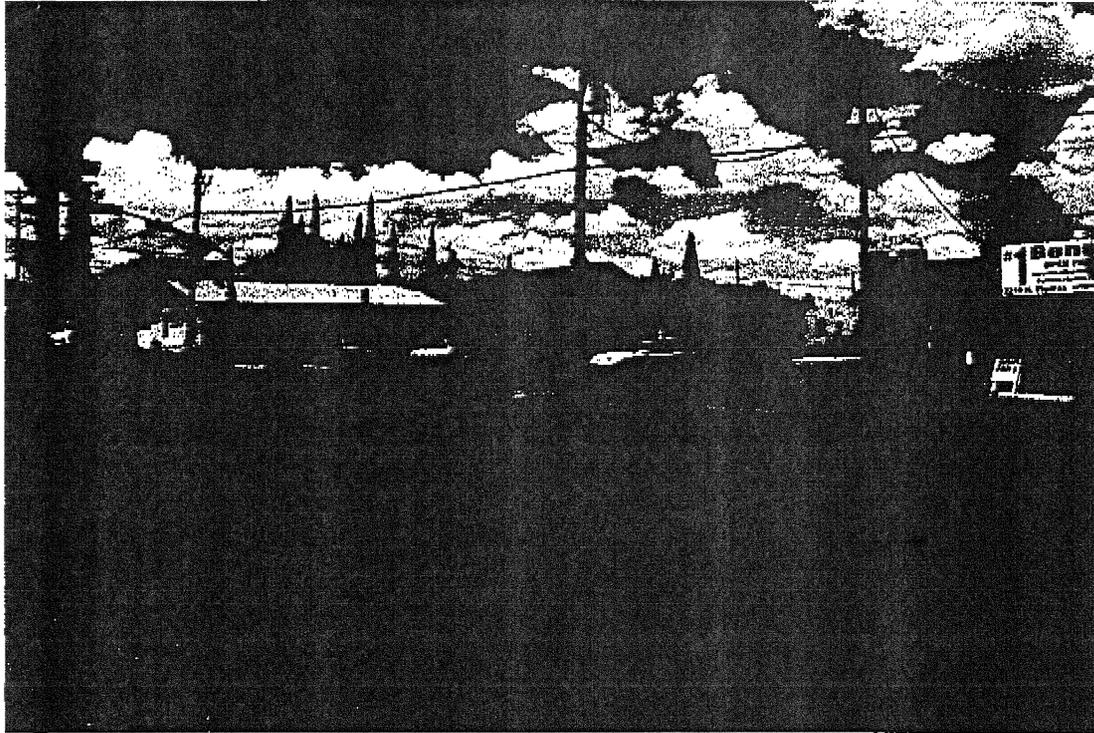


**Attachment 11 Photographs – Mazzo Automotive, 2219 N. Piedras, El Paso, TX**



**View north along N. Piedras Street, abutting east boundary of proposed location**

**Attachment 11 Photographs – Mazzo Automotive, 2219 N. Piedras, El Paso, TX**

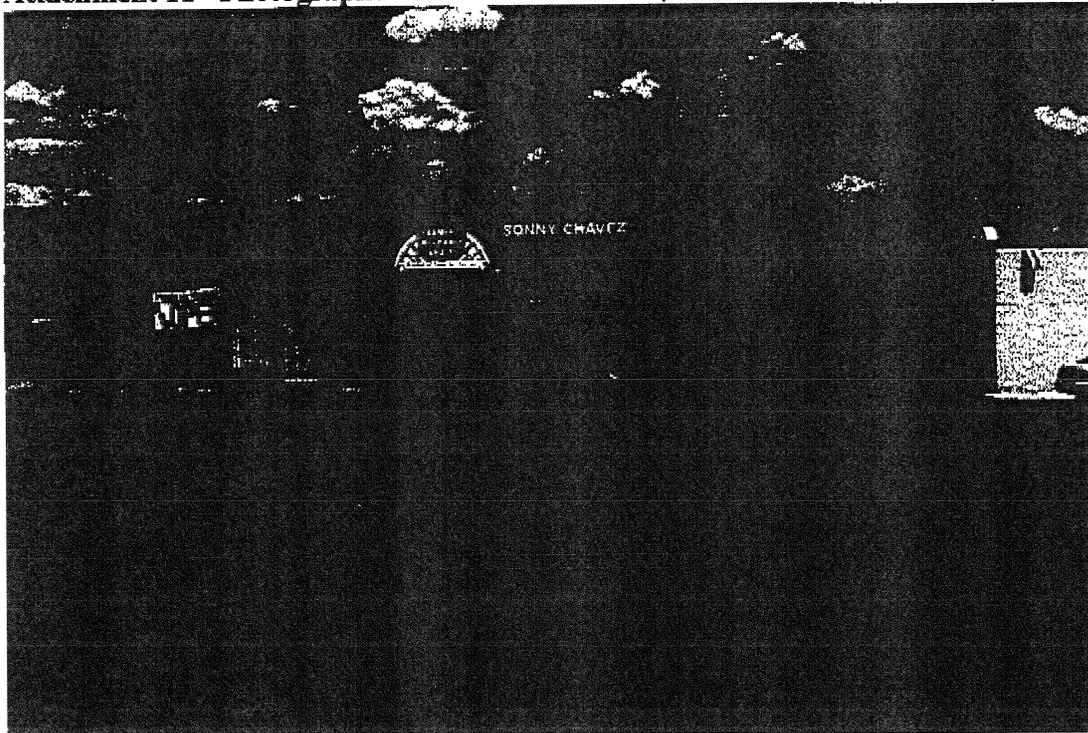


**View northeast from east side of fence of proposed tower location-shows intersection of N. Piedras and Altura St.**

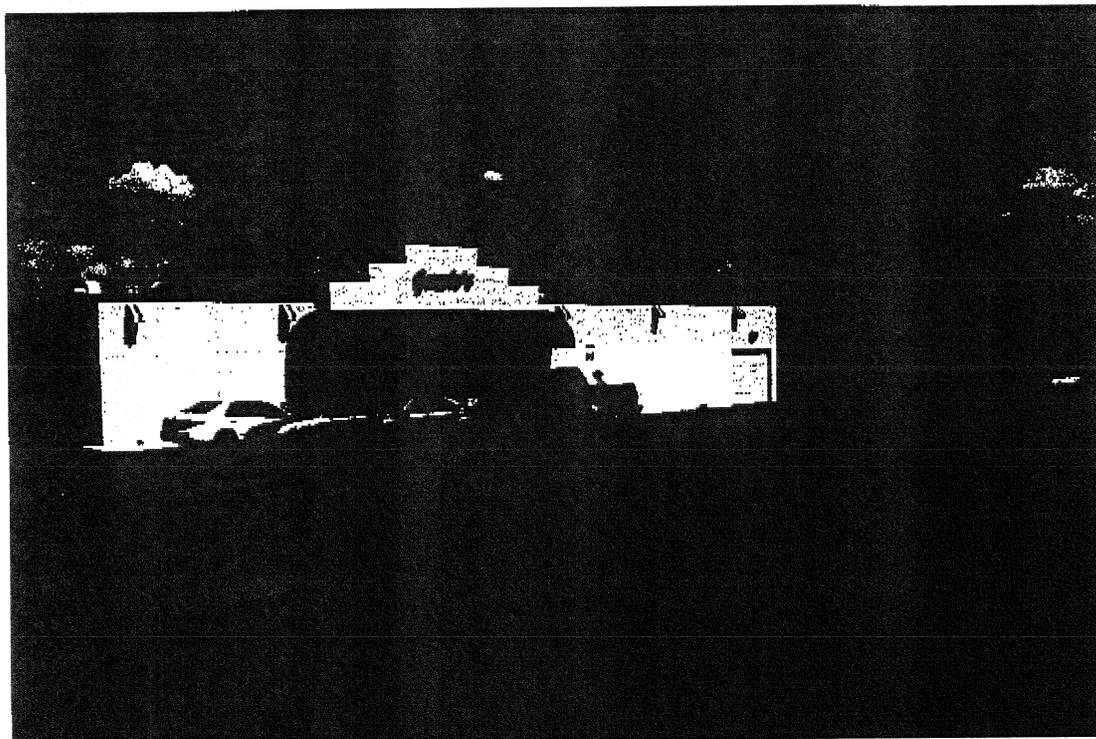


**View east-northeast from proposed location-easterly across N. Piedras Street**

**Attachment 11 Photographs – Mazzo Automotive, 2219 N. Piedras, El Paso, TX**

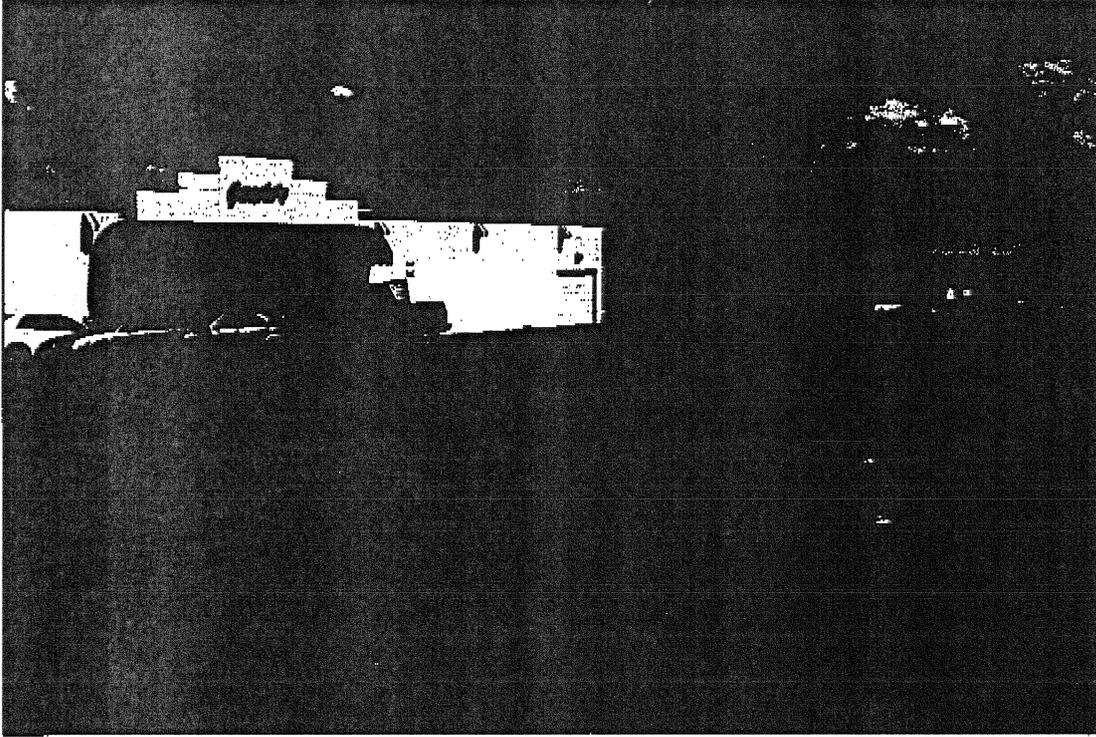


**View east from proposed location**

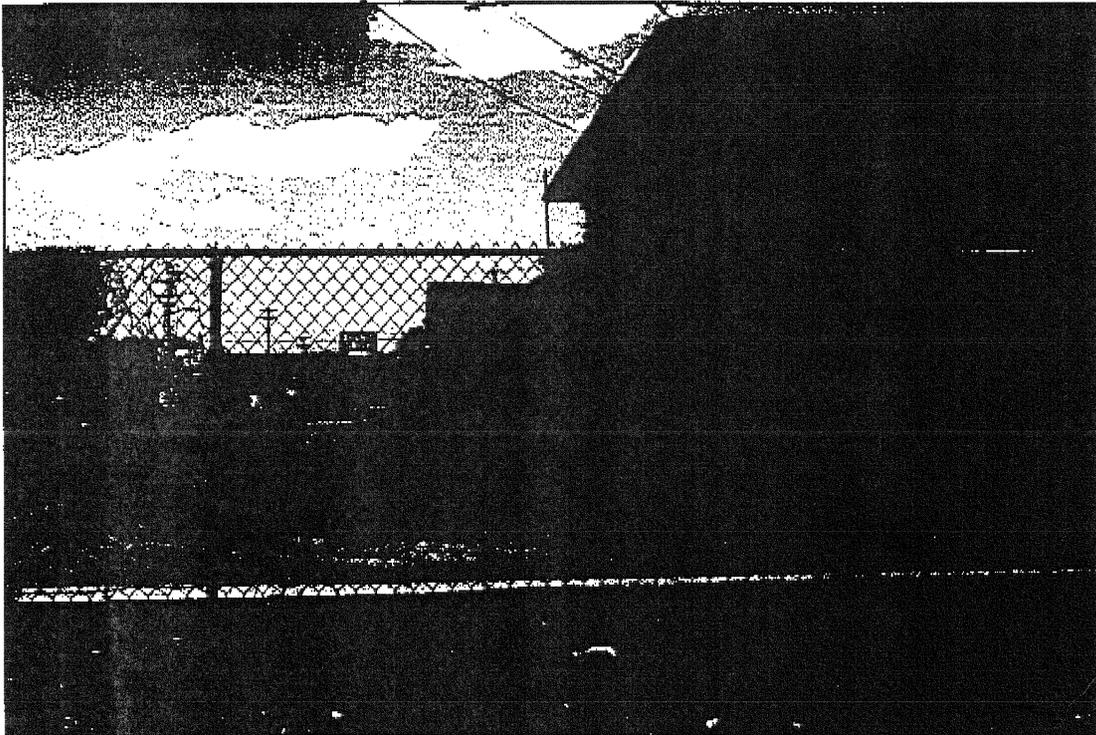


**View southeast from proposed location**

**Attachment 11 Photographs – Mazzo Automotive, 2219 N. Piedras, El Paso, TX**

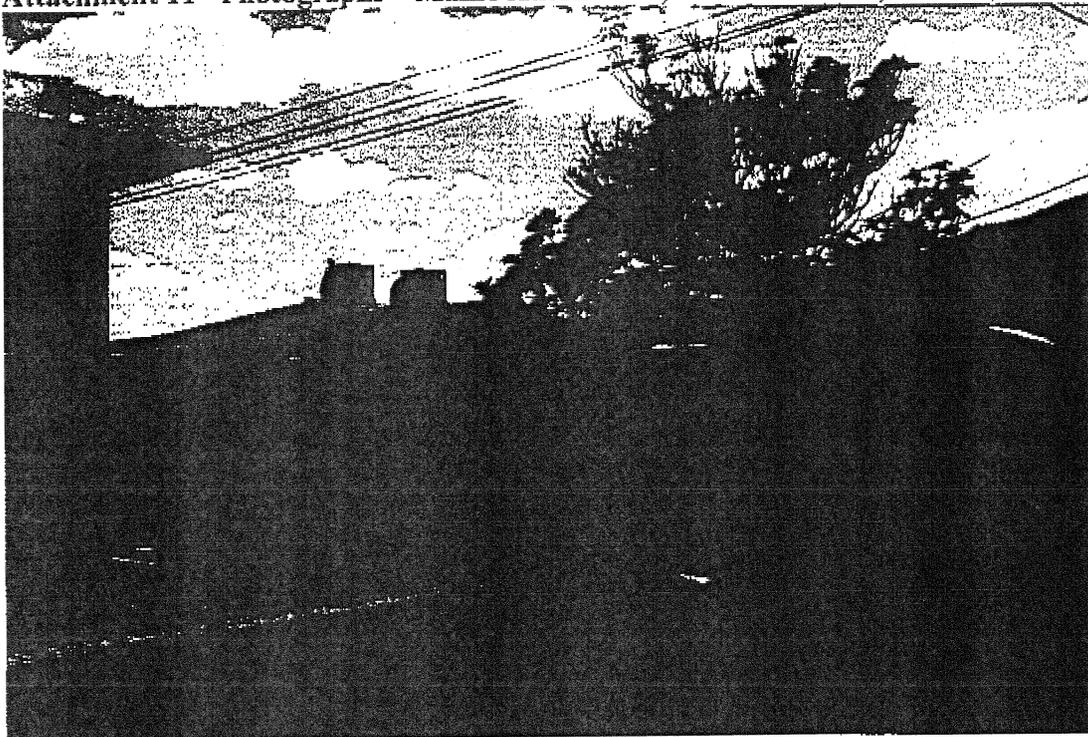


**View south-southeast from proposed location**

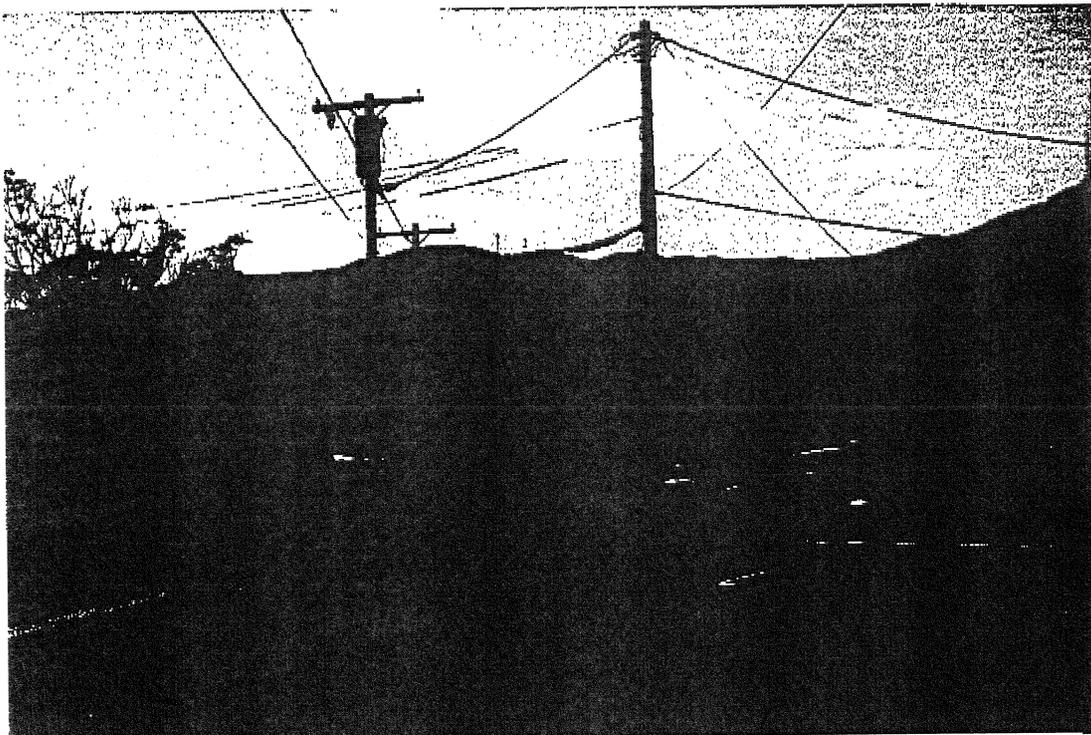


**View south from proposed location toward Manhattan Heights Historic District. House shown not in historic district and not likely eligible due to alterations. District begins in next block south.**

**Attachment 11 Photographs – Mazzo Automotive, 2219 N. Piedras, El Paso, TX**

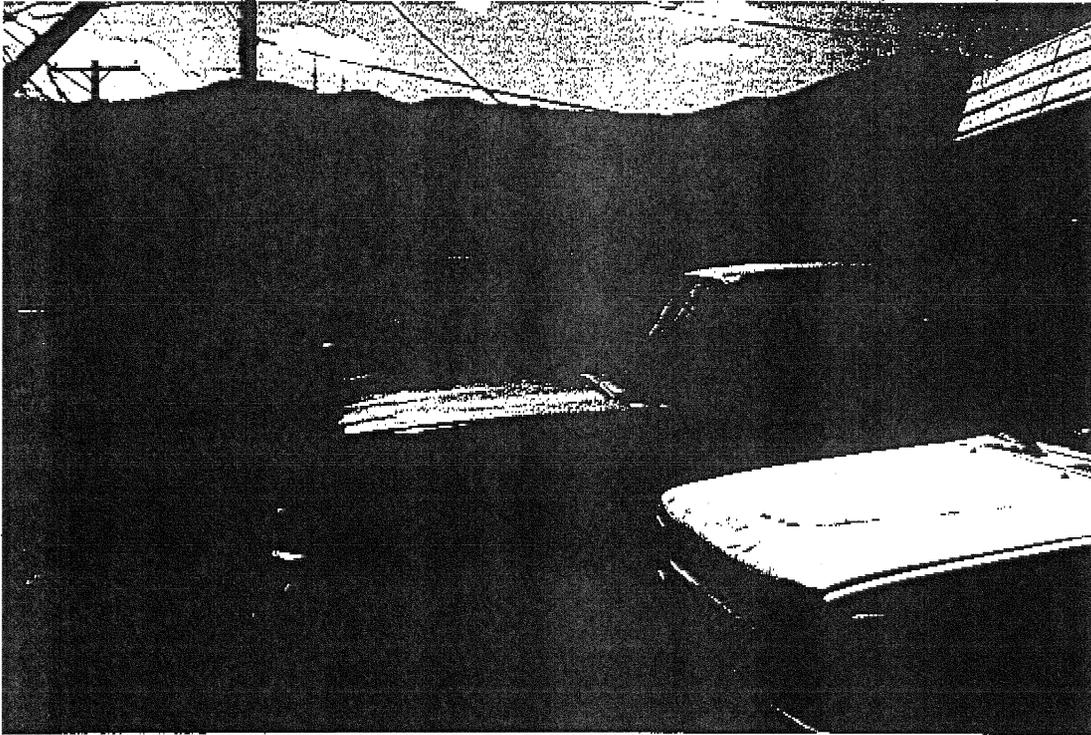


**View southwest from proposed location**

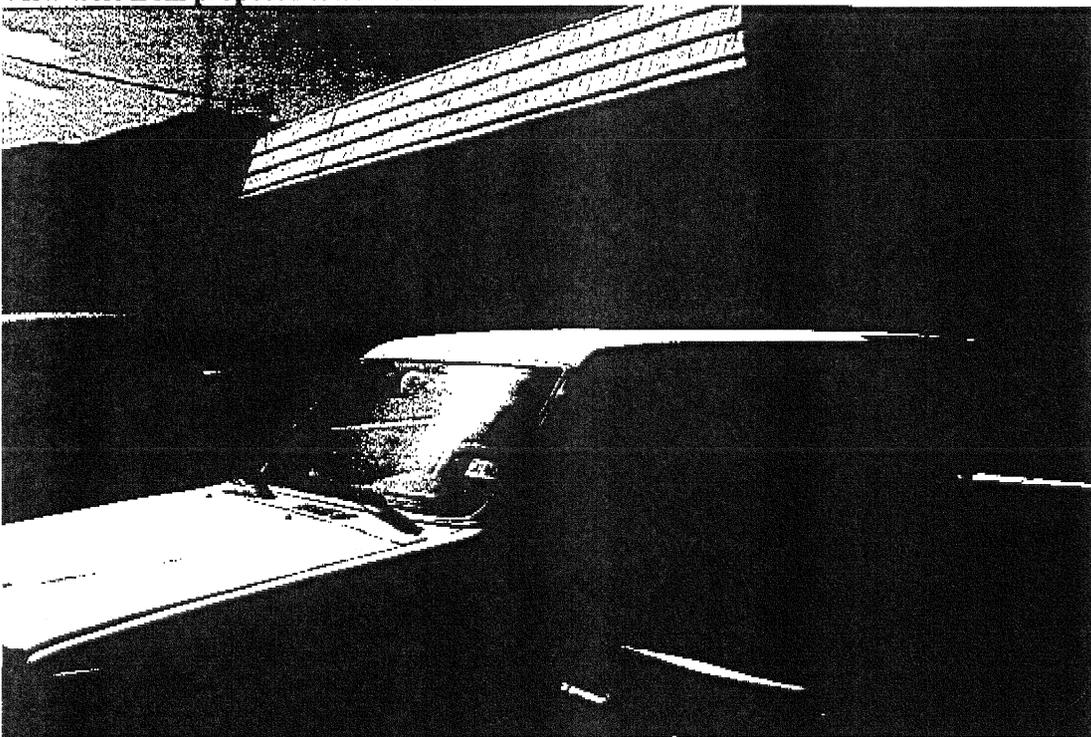


**View west down alley that abuts south side of proposed location**

**Attachment 11 Photographs – Mazzo Automotive, 2219 N. Piedras, El Paso, TX**



**View west from proposed tower location**



**View northwest from proposed tower location**

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

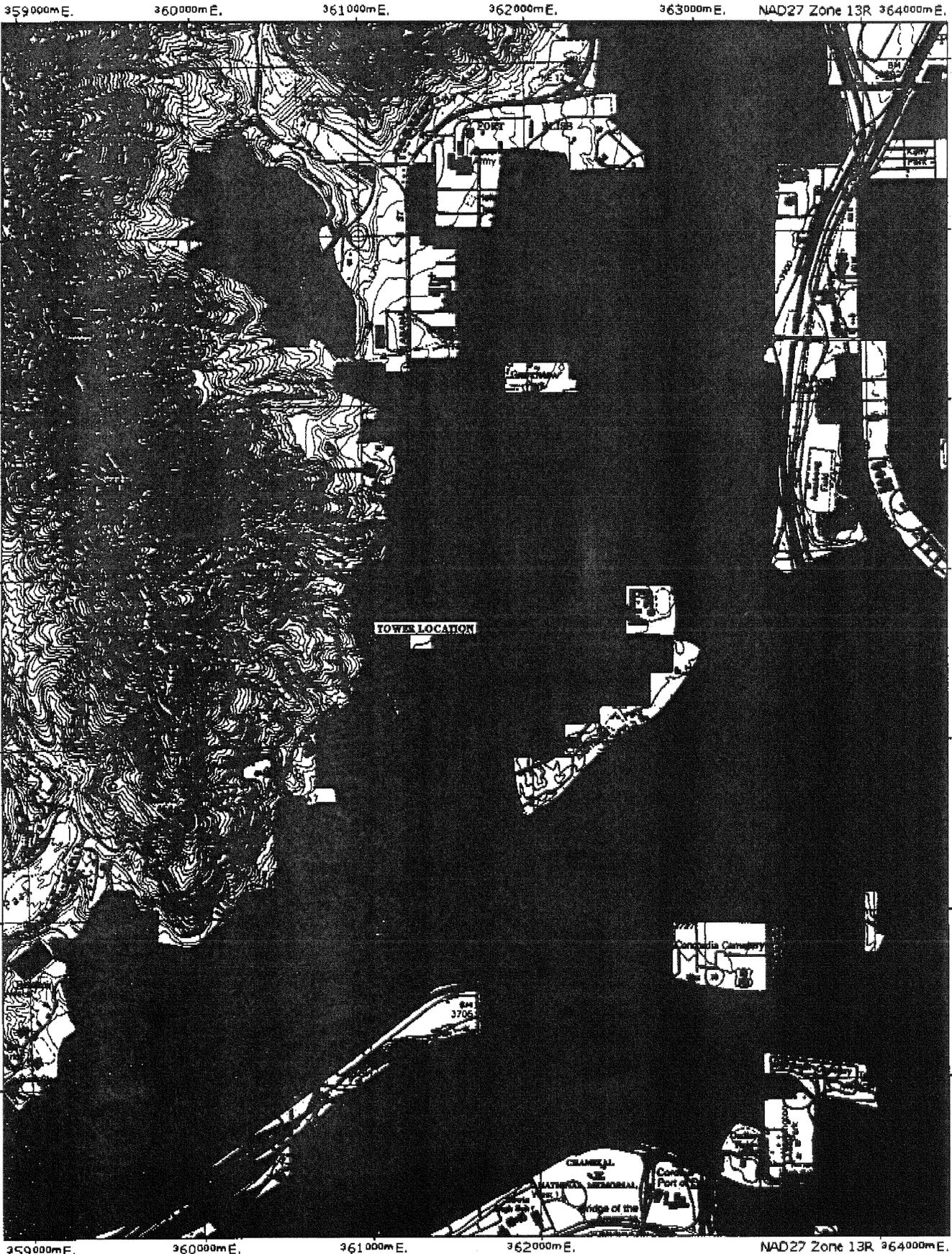
**Attachment 12**

**Maps**

See attached

Applicant's Name: T-Mobile, USA  
Project Name: Mazzo Automotive  
Project Number: NM02435A

MAZZO AUTOMOTIVE - NEWMAN PARK 7.5 Minute USGS Quadrangle



TN  
MIN  
9%

Map created with TOPO! ©2003 National Geographic (www.nationalgeographic.com/topo)



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0 533m

Tower Location

