P: (626) 314-3821
E: info@mitchtsailaw.com

Mitchell M. Tsai
Law Firm

139 S. Hudson Ave., Suite 200
Pasadena, California 91101

VIA E-MAIL

January 30, 2026

City and County of San Francisco, Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
Em: Board.of.Supervisors@sfgov.org; bos.legislation@sfgov.org

RE: Appeal of Planning Commission's Approvals for 350 Amber Drive Project on September 25, 2025 – California Environmental Quality Act (CEQA) Determination and Conditional Use Authorization (CUA) and Shadow Findings – (Record No. 2024-004318ENV) (2024-004318CUASHD)

Dear Board of Supervisors ("**Board**"),

On behalf of Diamond Heights Community Association ("**Appellant**"), our Office is submitting this correspondence for the February 10, 2026 public hearing regarding appeals of the City and County of San Francisco ("**City**" or "**County**") Planning Commission's ("**Commission**") approvals on September 25, 2025 for the development project proposed to be located at 350 Amber Drive in the City (Record No. 2024-004318ENV) ("**Project**"), including a) the California Environmental Quality Act ("**CEQA**") Exemption Determination; and b) Approval of Conditional Use Authorization ("**CUA**") and Shadow Findings.

The Diamond Heights Community Association is an organization of City residents and property owners near the Project site with a strong interest in well ordered land use planning and in addressing the environmental impacts of the Project, including potential impacts on the adjacent Glen Canyon Park and its natural and biological resources. Individual members of the Diamond Heights Community Association live, work, and recreate in the Project vicinity and may therefore be directly affected by the Project.

The City describes the proposed Project as "the installation of a new AT&T Wireless Macro Wireless Telecommunications Services (WTS) Facility on an approximately 104-foot-tall monopole located at the rear of the San Francisco Police Academy. The

WTS facility will consist of twelve (12) new antennas, nine (9) new remote radio units, three (3) tower mounted DC-9 surge suppressors, one (1) GPS unit mounted on proposed outdoor equipment cabinet, one (1) walk-up cabinet, and one (1) 30kw DC generator with a 150-gallon diesel fuel tank on a concrete pad. The ancillary equipment will be surrounded by an 8' chain link fence." (*See* September 25, 2025 San Francisco Planning Commission, Executive Summary, pp. 1-2).

Pursuant to Sections 31.04 and 31.16 of the City Administrative Code, and Section 308.1 of the City Planning Code, our office is submitting this additional correspondence in support of its original appeals and in reply to the Project Sponsor's Response. On appeal, the Board of Supervisors is not limited to the Commission's earlier analysis or findings and may conduct its own independent review of whether the Commission's findings were proper and adequately supported. The Board shall consider anew all facts, evidence and issues related to the adequacy, accuracy and objectiveness of the CEQA decision, including, but not limited to, the sufficiency of the CEQA decision and the correctness of its conclusions. Admin. Code Section 31.16(b)(6).

The Appellant expressly reserves the right to supplement this letter with additional evidence and materials at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project. Gov. Code, Section 65009(b); Pub. Res. Code, Section 21177(a).

Lastly, the Appellant fully incorporates by reference all the comments and concerns raised to date on the Project or its environmental CEQA clearance, including Appellant's own correspondence in support of its appeals of the Project's CEQA Exemption Determination and CUA and Shadow Findings, submitted to the Board on October 27, 2025, November 26, 2025, and December 3, 2025. *See Citizens for Clean Energy v. City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

I. THE PROJECT IS FACIALLY INELIGIBLE FOR THE CEQA CLASS 3 CATEGORICAL EXEMPTION IT SEEKS BASED ON THE PLAIN STATUTORY TEXT, AND THE BOARD OF SUPERVISORS MAY LAWFULLY DENY THE PROJECT ON THAT BASIS ALONE.

The Board's lawful authority to deny the proposed Project under state law, and CEQA specifically, is rather simple: it merely needs to determine that the Project is not eligible for the CEQA exemption it seeks, as the administrative record and evidence overwhelmingly indicates that it is not.

The Planning Commission's determination that the Project is exempt from further environmental review under the CEQA Class 3 categorical exemption is legally indefensible. The plain statutory text of the CEQA Guidelines clearly limits the application of Class 3 exemptions to the "construction and location of limited numbers of new, small facilities or structures." CEQA Guidelines Section 15303. The proposed Project, described as the "installation of a new AT&T Wireless Macro Wireless Telecommunications Services (WTS) Facility on an approximately 104-foot-tall monopole," fundamentally conflicts with the statute's explicit mandate for ***small structures***. A 104-foot-tall wireless tower is by no reasonable standard a "small facility" and its sheer scale renders it incompatible and ineligible for the relief sought under the Class 3 exemption.

Furthermore, the Project's scope and specifications confirm its ineligibility for the Class 3 exemption, especially when compared to the statutory examples provided in the CEQA Guidelines. The Project involves constructing a free-standing, independent, massive tower and ancillary equipment, including twelve new antennas, nine new remote radio units, and a 30kW DC generator with a 150-gallon diesel fuel tank on a concrete pad. The Project's significant scale clearly exceeds the scope of the enumerated examples, such as single-family residences or small commercial buildings not exceeding 10,000 square feet. Additionally, the Project is fundamentally incompatible with Class 3 criteria because it entails the installation and operation of the 150-gallon diesel fuel tank, thereby involving "hazardous substances" and posing a "significant risk of exposure to hazardous substances" in the vicinity. The facts regarding the Project's substantial development demonstrate that the Planning Commission's finding of exemption is flawed as a matter of law and must now be reversed.

II. EVEN IF THE PROJECT WERE ELIGIBLE FOR THE CEQA CLASS 3 CATEGORICAL EXEMPTION, *SEVERAL EXCEPTIONS* APPLY THAT MAKE IT INELIGIBLE AND THEREFORE TRIGGER ADDITIONAL ENVIRONMENTAL REVIEW, INCLUDING PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT.

Even if the Project were eligible for the Class 3 Categorical Exemption, it would nonetheless be subject to further environmental review under CEQA Guidelines Section 15300.2 based on several exceptions, including its location, cumulative impacts, significant effects, and impacts on historical resources. 14 CCR Section 15300.2. CEQA Guidelines Section 15300.2 provides several "exceptions" that trigger additional environmental review, even if a project is otherwise eligible for an exemption, including the Class 3 categorical exemption this Project seeks. The Project here implicates several of those exceptions, clearly indicating the need for additional environmental review under CEQA.

First, the Project's placement directly implicates the **location** exception under CEQA Guidelines Section 15300.2(a) because the facility is proposed in a particularly sensitive environment, demanding extensive environmental review. The Project is situated near Glen Canyon Park, which is identified as one of San Francisco's 31 significant natural resource areas (SNR). The significant nature of this adjacent habitat, known for rare species and a vital wildlife corridor, mandates heightened scrutiny, especially when considering the Project's location atop an infill site with a recorded history of seismic activity. The installation of a massive 104-foot tower requiring deep mounting in unstable soils creates a potential for landslides and ground failure, directly threatening the nearby natural resources and recreational areas. The Project's significant and undeniable risks elevate it well beyond the threshold of being "ordinarily insignificant."

Second, the Project falls under the **significant effect** exception due to the *unusual circumstance*s surrounding its hazardous components and severe potential consequences. The Project's installation includes a 150-gallon diesel fuel tank for the generator, which introduces chemical hazards and the potential for leaks that could release benzene, a known carcinogen, into this environmentally sensitive area. The Project's threat of chemical contamination, coupled with the proven fire risks associated with wireless facilities and the Project's proximity to a grove of highly flammable eucalyptus trees, creates an unusually dangerous condition. The Project's

combined seismic, chemical, fire, and other hazards constitute a reasonable, and even likely, possibility of a significant effect on the environment, particularly impacting the nearby children's playground, residences, and the natural resources of Glen Canyon Park.

Lastly, the Project triggers the **cumulative impact** and **historical resources** exceptions, requiring an Environmental Impact Report (EIR) to comprehensively analyze all compounded effects. Approving a "macro" facility of such substantial size and type could set a precedent, leading to the proliferation of similar wireless facilities and resulting in a cumulatively significant impact over time. Moreover, in the foreseeable event of a fire or landslide, the Project poses a threat to many nearby structures, including many of architectural or special significance to the City and its residents. Since the Project may cause a substantial adverse change in the significance of this potential historical resource, the Planning Commission erred in attempting to exempt it from further environmental review under the Class 3 category.

In sum, the Board may lawfully deny the proposed Project simply on the grounds that it does not comply with CEQA because it is not eligible for or compatible with the categorical exemption that it seeks.

III. THE BOARD OF SUPERVISORS MAY LAWFULLY DENY THE PROJECT WITHOUT EFFECTIVELY PROHIBITING WIRELESS SERVICE OR VIOLATING FEDERAL LAW BECAUSE THE PROJECT SPONSOR CANNOT ESTABLISH A SIGNIFICANT COVERAGE GAP AND THERE ARE OTHER LESS INTRUSIVE ALTERNATIVES TO THE PROPOSED PROJECT.

From the outset, it is important to note that the federal law issues raised by the Project Sponsor in their Response, including issues under the Telecommunications Act (TCA), are outside the relevant scope of the subject appeals. Specifically, Appellant's appeals solely ask the Board to review the Planning Commission's prior determinations regarding the Project's CEQA Exemption, CUA approval, and related Shadow Findings; not to review the Project's consistency with federal law. However, the Project Sponsor's Response introduces new issues under federal law that are tangential and indirectly related to the Planning Commission's prior determinations or the Project's entitlements. As such, the Project Sponsor suggests that the Project's required compliance with CEQA and the City's own land use framework must yield to federal law, but that is not the case.

On the contrary, Appellant asserts that denying the Project would not violate federal law or constitute an "effective prohibition" of wireless coverage as the Project Sponsor argues. Thus, the Board may lawfully deny the project without effectively prohibiting wireless service or violating federal law because doing so would not violate the TCA or conflict with federal law, whereas it is required under state law. Indeed, without presenting any conflict between federal, state, and local laws, the Board is required to deny the Project because it clearly violates CEQA, as explained above.

In its response to Appellant's appeal(s), the Project Sponsor raises new issues under federal law that are outside the scope of the appeal(s) and unrelated to the Project's entitlements that are at issue. Thus, the Sponsor suggests that, independent of state and local laws, the Board must approve the Project as proposed or risk violating federal law. This is not so. First, as outlined above, the Board may lawfully deny the Project based on its ineligibility for the CEQA Class 3 Categorical Exemption alone. Indeed, the Board may not lawfully approve a Project that clearly contravenes CEQA and avoids the requisite environmental review. Second, even considering the federal law issues raised by the Project Sponsor, the Board may still lawfully deny the Project without creating an effective prohibition.

In its Response to the Appellant's appeals on December 3, 2025, AT&T Wireless (AT&T), (Project "Applicant" or "Sponsor") argues that "the City's denial of the Project would amount to an effective prohibition and a violation of federal law" (See Project Sponsor Response, p. 4) and further that "Approval of the Project CUA Comports with Federal Law and Avoids an Unlawful Prohibition." (*See* Project Sponsor Response, p. 18). In support of this argument, the Project Sponsor explains that legal standard for an "effective prohibition" is met "when a wireless provider demonstrates (1) a significant gap in wireless service coverage, and (2) that the Project would provide the "least intrusive means," in relation to the land use values embodied in local regulations, to provide the service coverage necessary to fill that gap." (*Id.*) (*citing Metro PCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 734-35 (9th Cir. 2005).

However, as further explained below, the Project Sponsor relies on a two-part legal standard for "effective prohibition" that has gradually been replaced by a different legal standard that turns on whether a regulation "materially inhibits" wireless coverage. The "materially inhibits" standard has been specifically endorsed by the Ninth Circuit more recently and more closely mirrors or aligns with the Federal

Communications Commission's (FCC) own standard for evaluating effective prohibition.

Nevertheless, even under the two-part legal standard that the Project Sponsor advocates for, denial of the proposed Project would not constitute an effective prohibition and would therefore not violate federal law, including the Telecommunications Act.

A. The Project Sponsor fails to establish a significant gap in wireless service coverage that justifies or supports the proposed Project.

First, the Project Sponsor showing of a "significant gap in wireless coverage" is unsubstantiated, predicated on incomplete or inaccurate information, unverifiable, and has since been revised following the Planning Commission's determination on September 25, 2025.

From the Appellant's perspective, the technical demonstration of a significant coverage gap is highly questionable and refutable because AT&T failed to provide key supporting data for independent scrutiny. The Sponsor relies on "industry-standard" coverage maps generated by a sophisticated tool called Atoll, but these are merely simulations based on complex datasets. While the maps were peer-reviewed and verified by an independent drive test, AT&T did not present the raw drive test data itself for full examination. This omission prevents a comprehensive and independent technical evaluation of the claimed weak signal levels. Without the underlying data, the claimed "significant gap" remains a projection rather than an independently and empirically verifiable fact. The Project Sponsor asks the City and Board to wholly rely on its own representations and calculations regarding wireless coverage even if they cannot be independently ascertained.

Furthermore, the Project fails to technically justify the necessity for such a large facility to solve the problem of reliable in-building service. The Sponsor acknowledges that other online coverage maps, including their own website, show ***some existing*** coverage in the area. The crucial difference is apparently the need for reliable in-building service. AT&T claims that a signal in the yellow, blue, or white shading on their map is inadequate and constitutes a service coverage gap, necessitating the new monopole. However, the proposal does not sufficiently demonstrate why the coverage gap cannot be addressed with a smaller, less intrusive solution, such as an alternative site or design that provides sufficient line-of-sight without the massive 104-foot

structure. AT&T's analysis did not identify any available, feasible, and less intrusive alternative.

Finally, the Project Sponsor's argument that this facility is absolutely essential for FirstNet service is also an overstatement that misrepresents the current state of public safety coverage in the area. The Sponsor concedes that 4G LTE service on 700 MHz is the platform for all FirstNet services in San Francisco. However, their own documentation shows an "Existing LTE 700 Coverage" map, indicating that ***some signal already exists*** from surrounding sites, even if it is deemed inadequate. Therefore, the Project is not generating FirstNet coverage from a state of total absence, but is instead designed to raise the existing service level from occasionally poor quality (yellow, blue, or white shading) to a higher, more reliable standard. Thus, the Project represents an improvement to an existing service, not a necessary provision to create and sustain service altogether. The crucial distinction between improving existing coverage versus introducing new coverage where it does not exist challenges and directly undercuts the Project Sponsor's claim of necessity, suggesting that a material inhibition of service may not exist as strenuously as argued or as has been represented.

Thus, the Project Sponsor has failed to demonstrate that a significant gap exists in wireless coverage warranting the proposed Project.

B. <u>The Project Sponsor has failed to establish that the Project is the least intrusive means to provide wireless coverage because other viable alternatives exist that were summarily rejected or not fully evaluated.</u>

The Project Sponsor further cannot establish that the proposed Project would be the "less intrusive means" to provide wireless service coverage in light of the City's land use framework. From the Appellant's perspective, the Project Sponsor has failed to prove that the proposed 104-foot monopole is truly the least intrusive means to close the alleged coverage gap. The Project Sponsor's own documentation confirms that it conducted a comprehensive alternative sites analysis, reviewing seven other properties, but the reasons for rejecting these sites appear weak or generalized at best. For instance, three of the four Preference 1 sites (480 Teresita Blvd, 5200 Diamond Heights Blvd, and 5210 Diamond Heights Blvd) were rejected simply because the "Property owner was not interested." Such abbreviated rejection indicates a failure of immediate availability, not necessarily technical feasibility, suggesting that the Project Sponsor did not fully pursue the more preferable locations identified by the City's own siting guidelines.

The Project Sponsor's rejections of other alternative sites based on technical limitations are also questionable, suggesting an insufficient effort to find a less intrusive structural compromise. The co-location site (5285 Diamond Heights Blvd) and the commercial rooftop site (5214 Diamond Heights Blvd) were rejected because they would not provide "sufficient signal to coverage objective area." The core objective is providing reliable "in-building service," which demands a significantly stronger signal than outdoor coverage. The Project Sponsor's rejection of lower-height options because they couldn't meet this high standard for in-building service implies they prioritized their absolute signal threshold over finding a solution with less visual impact on the community.

Lastly, the Project Sponsor failed to provide evidence that they considered a range of less intrusive design alternatives beyond a single massive monopole. If the inability to provide the target in-building coverage is the primary technical impediment to less intrusive sites, the Sponsor should have analyzed smaller facilities or Distributed Antenna Systems (DAS) that could achieve similar coverage goals with a reduced physical footprint or height. The lack of demonstrated design flexibility renders the claim of "least intrusive means" hollow, as only one extremely intrusive option was ultimately deemed feasible. In other words, the Project Sponsor's unwillingness and refusal to even consider design alternatives also undercuts its claim that the proposed Project site is the one and only viable and feasible option.

Thus, the Project Sponsor has also failed to meet its burden of showing that the proposed Project is the least intrusive option in light of other viable alternatives.

C. Because the Project Sponsor has not made a prime facie showing that denying the Project would be an effective prohibition, the City and Board need not identify the availability of other potential or feasible alternatives.

In the Ninth Circuit, the burden shifts to the local government to identify an available, feasible, and less intrusive alternative *only after* the provider makes a sufficient prima facie showing of effective prohibition. *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995-99 (9th Cir. 2009). Here, the Project Sponsor has failed to establish a prima facie case that denial of its proposed Project would effectively prohibit wireless service, therefore the City and Board are under no obligation to identify alternative sites. In other words, the Project Sponsor has not met its own burden and can therefore not shift the burden to the City or Board. Specifically, the Project Sponsor cannot establish the existence of a significant coverage gap when there is existing

coverage at and surrounding the Project site. Given the arbitrary rejection of multiple preferential sites based solely on owner disinterest, and the failure to present a spectrum of design alternatives to meet the coverage objective, among others reasons, the Project Sponsor's fails to meet its burden and its initial showing of "least intrusive means" is weak at best. Therefore, the City or Board is under no obligation to identify a replacement site, and the Planning Commission's approval based on this flawed premise should be reversed.

D. The Board may lawfully deny the proposed Project without effectively prohibiting wireless service or violating federal law because denial would not materially limit or inhibit the ability of providers to compete.

In the *City of Portland v. United States*, the Ninth Circuit clarified and held that the relevant legal test for determining an effective prohibition is whether denial would "materially inhibit" the ability of providers "to compete in a fair and balanced legal and regulatory environment." 969 F.3d 1020, 1034-35 (9th Cir. 2020). In doing so, the Ninth Circuit affirmed the FCC's own policy and guidance for determining "effective prohibition" of wireless coverage under the TCA as articulated in the FCC's *Small Cell Order*. *See In the Matter of California Payphone Association Petition for Preemption, Etc., Opinion and Order*, FCC 97-251, 12 FCC Rcd 14191 (July 17, 1997) (adopting material inhibition test). Thus, a court reviewing the Board's denial of the Project would be more likely to apply the "material inhibition" standard endorsed in *City of Portland* rather than the two-part test articulated in *MetroPcs*.

In its Response, the Project Sponsors acknowledges and even concedes that the relevant legal test for determining an "effective prohibition" is whether denial "materially inhibits" wireless service coverage. (*See Project Sponsor Response*, pp. 18-19). However, beyond acknowledging the applicability of this legal test, the Project Sponsor does not attempt to show or establish how denying the proposed Project would satisfy that standard, instead relying on the two-part test.

Under the "material inhibition" standard, effective prohibition turns on whether an agency action would "materially inhibit" the ability of providers "to compete in a fair and balanced regulatory environment." *City of Portland*, 969 F. 3d at 1034-35. Here, from the Appellant's perspective, denying the Project would not meet the stringent "material inhibition" test because AT&T's own evidence demonstrates existing service and merely targets an ***improvement*** in quality. The "Existing LTE 700 Coverage" map provided by the Sponsor clearly shows that the area is not entirely devoid of signal; rather, portions are shaded yellow or blue, indicating existing service that is simply less

reliable for in-building use. Material inhibition, by its definition in FCC and Ninth Circuit case law, typically prevents the provision of a new service, restricts the entry of a new provider, or substantially impedes the improvement of existing services altogether. However, since AT&T's primary goal is to upgrade the reliability of service to an "in-building standard" and enhance the existing FirstNet platform, a denial would not constitute a complete or effective prohibition of service to the area.

Furthermore, the Sponsor fails to demonstrate that an **improvement** to in-building reliability is materially inhibited when multiple, more preferable sites were rejected solely due to owner unwillingness, limited interest, or other perfunctory reasons. Three Preference 1 sites (480 Teresita Blvd, 5200 Diamond Heights Blvd, and 5210 Diamond Heights Blvd) were discarded because the "property owner was not interested." The burden of proof for the least intrusive means test requires AT&T to go further and exhaust all available and feasible alternatives before claiming a denial amounts to effective prohibition. Since AT&T did not overcome basic issues of site availability on preferable public and church properties, it cannot now persuasively argue that a denial of the single most intrusive, 104-foot monopole on the police academy property **materially inhibits** their service when it independently abandoned legally preferable alternatives based on non-technical grounds. Consequently, a denial of the Project is simply a rejection of a specific, highly intrusive proposal, not a systemic prohibition of wireless service improvement that arises to a material inhibition of effective prohibition of wireless service entirely.

IV. THE BOARD MAY LAWFULLY CONSIDER THE PROJECT'S AESTHETIC IMPACTS IN DENYING THE PROJECT WITHOUT EFFECTIVELY PROHIBITING WIRELESS SERVICE, INCLUDING THE CITY'S OWN ACKNOWLEDGEMENT AND DETERMINATION THAT THE PROJECT WILL HAVE SIGNIFICANT IMPACTS ON AESTHETICS IN THE CONDITIONAL USE AUTHORIZATION (CUA) SHADOW FINDINGS.

The Ninth Circuit has recognized that aesthetic concerns constitute legitimate grounds for denying wireless facility applications when properly supported by substantial evidence and based on more than just generalized concerns. For example, in *Sprint PCS Assets, LLC v. City of Palos Verdes Estates*, the court held that "the City's finding, in denying wireless telecommunications provider's permit applications to construct two wireless telecommunications facilities (WCFs) in the city's public

rights-of-way, that the proposed WCFs would adversely affect its aesthetic makeup was supported by 'substantial evidence' under the Telecommunications Act, where the city council reviewed propagation maps and mock-ups of the proposed WCFs and a report that detailed the aesthetic values at stake." 583 F.3d 716, 726 (9th Cir. 2009). Congress has also expressly acknowledged "that there are legitimate state and local concerns involved in regulating the siting of (wireless services) facilities, such as aesthetic values and the costs associated with the use and maintenance of public rights-of-ways" *See T-Mobile USA, Inc. v. The City of Anacortes*, 2008 WL 3412382 at *2 (W.D. Wash. July 18, 2008).

In *Sprint Telephony PCS, L.P. v. County of San Diego*, the Ninth Circuit held that an ordinance did not effectively prohibit wireless services where "none of the requirements, individually or in combination, prohibited the construction of sufficient facilities to provide wireless services in the county, and while a zoning board could exercise its discretion to effectively prohibit the provision of wireless services, it was equally true that a zoning board would exercise its discretion to balance the competing goals of the ordinance, which were the provision of wireless services and other public goals such as safety and aesthetics." 543 F.3d 571, 578 (9th Cir. 2008).

Here, the Board of Supervisors can and should deny this Project based on its substantial negative aesthetic impacts, demonstrating that Appellant's and the overall neighborhood's concerns are far beyond mere generalized opposition or "Not In My Backyard" (NIMBY) sentiment. The proposed Project proposes a massive, industrial 104-foot monopole, which AT&T claims is *only* minimally higher than the surrounding mature trees by 10 to 20 feet. The Project's massive 104-foot structure is not a discreet rooftop antenna but a significant industrial intrusion into a residential, park-adjacent area classified as a Preference 1 site under City guidelines. The Appellant and other public commenters have explicitly raised "zoning and height inconsistencies" and detrimental aesthetic impacts that, when considered alongside the Project's failure to meet the least intrusive means test, elevate these aesthetic objections to the level of substantial evidence. The sheer size and nature of this facility, including the adjacent 30kw generator and 150-gallon diesel fuel tank, create a uniquely adverse visual impact that directly contradicts the CUA finding regarding compatibility with the neighborhood.

The Project Sponsor's argument that the Project's aesthetic concerns are merely "generalized" and therefore non-substantial is incorrect because the neighborhood's objections directly relate to the Project's non-compliance with the City's own local land

use policies and values, including the General Plan. The Project site is near the San Francisco Police Academy, which is adjacent to the public P-OS (Public Open Space) zoned Glen Canyon Park, and the visual impact therefore affects public spaces as well as private views. AT&T's visual analysis uses photosimulations taken only from public vantage points, ignoring the explicitly raised concerns that views from neighboring homes and private views are substantially impacted. Further, the Project Sponsor's own analysis only compares the monopole to the height of surrounding trees, confirming the structure will protrude above the canopy, creating a skyline violation that dramatically alters the visual character of this scenic area, and a key public welfare issue that supports denial. Denying a project based on its detrimental effect on the neighborhood's aesthetic character, when that design is demonstrated to be unnecessarily large and intrusive, is a legitimate exercise of local authority supported by substantial evidence.

Further, the aesthetic impact merges with the failure to explore less intrusive means, compounding the argument for denial under federal law. AT&T asserts its facility must be this high (104 feet) to provide reliable in-building service, a high-quality service threshold. However, the documentation reveals that less intrusive, preferential sites, like the lower rooftop at 5200 Diamond Heights Blvd or the co-location site at 5285 Diamond Heights Blvd, were rejected specifically because they would not provide this optimal, high-threshold coverage. Since AT&T demands a 104-foot structure to meet its self-imposed optimal service standard, thereby guaranteeing the severe aesthetic impact complained of, the Board may reject the Project on this basis. Given that the visual impact is the direct consequence of the Project's Sponsor's failure to settle for a feasible, less intrusive alternative that could still provide adequate service (if not optimal in-building service), the Board has substantial evidence that the specific design and height of this Project is incompatible with the neighborhood's welfare and should be denied.

Finally, the Project's negative aesthetic impacts are compounded by the Project's Shadow Findings that confirm negative impacts on sunlight access to neighboring properties and public spaces, constituting a unique and significant aesthetic injury. Because the Planning Commission made "Shadow Findings" when approving the CUA, Appellant asserts that these findings themselves constitute substantial evidence supporting and requiring the Project's denial. A 104-foot structure, protruding above the existing tree line by 10 to 20 feet, will undeniably cast significant, long-lasting shadows that affect adjacent residential parcels and nearby public recreational areas,

such as Glen Canyon Park. The loss of direct sunlight or the creation of vast shadow patterns directly degrades the perceived and actual quality, comfort, and usability of the neighborhood environment, converting a generalized visual objection into a quantifiable, substantial adverse impact on public welfare and neighborhood enjoyment. Denying the project on the grounds of such a palpable intrusion like the literal physical blocking of the sun is a valid aesthetic objection entirely supported by the City's own official Shadow Findings.

The Board may lawfully deny the project pursuant to federal law not only because the Project Sponsor has failed to make a prima facie showing of effective prohibition, but further because there is substantial evidence that the Project would have significant negative impacts to the existing aesthetics, community, and surrounding neighborhood.

V. CONCLUSION

In sum, the Board must now reverse the Planning Commission's approvals for the 350 Amber Drive Project on September 25, 2025 as flawed.

Following a thorough and full public hearing regarding the appeals herein, Appellant urges the Board to determine that the Project does not comply with CEQA and reverse the Project's approvals on that basis.

Should the Board nonetheless permit this controversial Project to move forward, it is legally obligated to approve the CEQA appeal and require the preparation of a full Environmental Impact Report (EIR) for the Project.

Lastly, Appellant respectfully requests that the Board direct City Staff and the Project applicant to address the public's concerns and comments regarding the Project.

Should the City have any questions or concerns regarding this correspondence, please do not hesitate to contact our office.

Sincerely,

Mitchell M. Tsai
Attorney for Appellant