

1 [Findings Disapproving Conditional Use for Property Located at 10 Bernal Heights Boulevard]

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3 **Motion adopting findings disapproving the Planning Commission’s approval of**  
4 **Conditional Use Authorization No. 2010.0306C (which approved the installation of**  
5 **wireless telecommunications facility consisting of five internet exchange switch**  
6 **antennas on an existing 50 foot tall communications tower and to modify the**  
7 **conditional use approval under case No. 2008.1157C to change the number of allowed**  
8 **antennas on the site within a RH-1(D) zoning district and a 40-X height and bulk**  
9 **district).**

10 The appellant, Erick Arguello, on behalf of the Lower 24<sup>th</sup> Street Merchant Association,  
11 filed a timely appeal on August 2, 2010 protesting the approval by the Planning Commission  
12 of an application for a conditional use authorization (Conditional Use Application No.  
13 2010.0306C, approved by Planning Commission Motion No. 18131 dated June 24, 2010),  
14 pursuant to Planning Code Sections 209.6(b) and 303, to authorize the installation of wireless  
15 telecommunications facility consisting of five internet exchange switch antennas on an  
16 existing 50 foot tall communications tower and to modify the conditional use approval under  
17 case No. 2008.1157C to change the number of allowed antennas on the site within a RH-1(D)  
18 zoning district and a 40-X height and bulk district, located at 10 Bernal Heights Boulevard,  
19 (Lot Nos. 003 in Assessor’s Block 5548).

20 The San Francisco Planning Commission adopted the Wireless Telecommunications  
21 Services (“WTS”) Facilities Siting Guidelines in August of 1996 (“Guidelines”) to assist the  
22 Planning Department in its consideration of applications for conditional use authorization to  
23 install WTS facilities. These Guidelines are not binding on the Board of Supervisors. The  
24 Guidelines establish location preferences for installation of WTS facilities throughout the City.  
25 The location preferences set forth seven categories, with location preference one being the

1 most preferred sites, and location preference seven being the most disfavored sites. The  
2 property located at 10 Bernal Heights Boulevard falls within a location preference one, a  
3 preferred location for a publicly used structure.

4 On November 16, 2010, the Board of Supervisors conducted a duly noticed public  
5 hearing on the appeal from the Planning Commission's approval of the conditional use  
6 authorization referred to in the first paragraph of this motion. Following the conclusion of the  
7 public hearing on November 16, 2010, the Board voted to disapprove the decision of the  
8 Planning Commission (Planning Commission Motion No. 18131 dated June 24, 2010) and  
9 denied the issuance of the requested Conditional Use Application No. 2010.0306C by a vote  
10 of 11-0.

11 In considering the appeal of the approval of the requested conditional use  
12 authorization, the Board reviewed and considered the written record before the Board and all  
13 of the comments made in support of and in opposition to the appeal.

14 NOW, THEREFORE, BE IT MOVED, That the Board of Supervisors of the City and  
15 County of San Francisco hereby adopts as its own and incorporates by reference herein, as  
16 though fully set forth, the findings made by the Planning Commission in its Motion No. 18131  
17 dated June 24, 2010, except as indicated below.

18 FURTHER MOVED, That the Board of Supervisors further took notice that the project  
19 was categorically exempt from environmental review pursuant to exception Class 3 of Title 14  
20 of the California Administrative Code. The Board finds that there have been no substantial  
21 changes in project circumstances and no new information of substantial importance that  
22 would change the determination of categorical exemption issued by the Planning  
23 Commission.

1 FURTHER MOVED, That the Board of Supervisors finds that:

2 1. The written and oral information provide by the applicant to the Board was not  
3 persuasive or objectively verified, and the applicant was unable to demonstrate credibly that  
4 the proposed WTS facility is necessary for the neighborhood or the community, contrary to the  
5 requirements of Section 303(c)(1) of the Planning Code.

6 2. The public testimony at the public hearing and the public documentation  
7 submitted in support of the appellant's objections to the decision of the Planning Commission  
8 supported the appellant's position that there is no necessity for the proposed WTS facility to  
9 be approved and installed for residential or business purposes in the neighborhood or the  
10 community because the proposed WTS facility is not necessary to meet the applicant's  
11 present service demands within the geographic service area defined by the applicant.

12 3. Notwithstanding the information submitted by the applicant at the November 16,  
13 2010, public hearing, the evidence showed that the applicant presently had acceptable  
14 service in the geographic area of the proposed WTS facility from the applicant's existing WTS  
15 facilities in the vicinity.

16 4. There is nothing in the record to suggest that the Board's decision to disapprove  
17 the decision of the Planning Commission in this case will unreasonably discriminate against  
18 the applicant in favor of providers of functionally equivalent services.

19 5. There is nothing in the record to suggest that the Board's decision to disapprove  
20 the decision of the Planning Commission in this case will limit or prohibit access to wireless  
21 telecommunications services in the geographic area of the proposed site.

22 6. There is nothing in the record to suggest that the Board's decision to disapprove  
23 the decision of the Planning Commission in this case will prevent the filling of a significant gap  
24 in wireless telecommunications services provided to remote users of those services in the  
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1 geographic area of the proposed site, whether those remote users obtain service from the  
2 applicant or from other wireless service providers serving the City.

3 FURTHER MOVED, That the Board of Supervisors, after carefully balancing the  
4 competing public and private interests, disapproved the decision of the Planning Commission  
5 by its Motion No. 18131 dated November 16, 2010, and denied the issuance of Conditional  
6 Use Authorization No. 2010.0306C.

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