



For immediate release

November 15, 2011

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SF Judge Orders a Stay of Construction of 726 AT&T Utility Boxes

San Francisco. On November 14, 2011, Judge Harold Kahn of the San Francisco Superior Court “stayed” the City of San Francisco’s approval of location and construction of 726 AT&T utility boxes citywide. The injunction will remain in effect pending a final ruling in the environmental lawsuit filed by a coalition of San Francisco organizations, including San Francisco Beautiful, San Francisco Tomorrow, the Dogpatch Neighborhood Association, the Potrero Boosters Neighborhood Association, and the Duboce Triangle Neighborhood Association.

The groups’ Petition for Writ of Mandate filed in August challenges the City’s refusal to conduct any environmental review whatsoever before approving 726 utility boxes that impact pedestrian safety and aesthetics.

Judge Kahn’s ruling (attached) explains that the stay is being granted because the City violated the California Environmental Quality Act. The evidence shows that the proposed AT&T boxes will have a “significant and cumulative adverse effect on the aesthetics of San Francisco.” The ruling relies on testimony at public hearings before the Board of Supervisors during which the public and many of the Supervisors, including Board President David Chiu, explained that the 726 boxes would have significant cumulative impacts that warrant environmental review.

“We are profoundly grateful to the Court for upholding environmental laws that require commonsense mitigation measures such as placing the AT&T equipment on private property rather than giving away our public sidewalks,” said Milo Hanke, past president of San Francisco Beautiful.

FILED
Superior Court of California
County of San Francisco

NOV 14 2011

CLERK OF THE COURT
BY: Andray [Signature]
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

County Of San Francisco

Department No. 220

SAN FRANCISCO BEAUTIFUL, et al.,

Petitioners,

v.

CITY AND COUNTY OF SAN
FRANCISCO, et al,

Respondents,

AT&T CALIFORNIA, et al.,

Real Parties in Interest.

Case No. CPF-11-511535

**ORDER GRANTING PETITIONERS'
MOTION FOR STAY**

A hearing was held on September 30, 2011 on petitioners' motion for a stay of the San Francisco Board of Supervisors' decision of July 19, 2011 affirming the determination by the San Francisco Planning Department that the AT&T Network "Lightspeed" Upgrade Project (Project) is exempt from CEQA. At the conclusion of the hearing I took the motion under

1 submission. After a thorough review of the parties' written and oral arguments and all the papers
2 submitted in support of and in opposition to the motion as well as my own independent research,
3 I have concluded that the motion should be granted.

4 Although there is some uncertainty in the decisions of the courts of appeal, the better-
5 reasoned position is that the "fair argument" standard applies to the "cumulative impact" and
6 "significant effect" exceptions set forth in CEQA Guidelines 15300.2(b) and (c). The materials
7 submitted by the petitioners demonstrate that there is a fair argument that: 1) the cumulative
8 impact of the AT&T utility boxes, considered alone or in conjunction with the many other pieces
9 of "street furniture" in San Francisco in the same places and over time, is significant and 2) there
10 is a reasonable possibility that the AT&T utility boxes will have a significant effect on the
11 environment due to the unusual circumstances of the large number (up to 726) of such boxes that
12 may be installed. As petitioners point out, aesthetics are among the environmental considerations
13 that are covered by CEQA and for which environmental impact reports have been required. The
14 record on this motion – particularly the transcripts of Board of Supervisors' hearings on July 29,
15 2008, April 26, 2011 and July 19, 2011 (exhibits E, M, N, and O) of which I take judicial notice
16 – reveals that there is a fair argument that the Project would have a significant and cumulative
adverse effect on the aesthetics of San Francisco.

17 The parties dispute whether a stay order should be conditioned on the posting of a bond
18 by petitioners. I did not find any statutory or appellate authority mandating that a bond be posted,
19 and I decline to exercise my discretion to require one. I am persuaded that petitioners are acting
20 in what they – and others – genuinely believe to be in the public interest. Nor is there is any
21 credible suggestion, much less any evidentiary showing, that the petitioners or any of them are or
may be acting abusively or in bad faith.

22 Accordingly, pending a final decision by this court on the petition for writ of mandate
23 filed by petitioners, the decision of the San Francisco Board of Supervisors' of July 19, 2011
24 affirming the determination by the San Francisco Planning Department that the AT&T Network
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1 "Lightspeed" Upgrade Project is exempt from CEQA is stayed without need for petitioners to
2 post a bond.

3 IT IS SO ORDERED.

4 Dated: November 10, 2011



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Harold Kahn
Superior Court Judge

Superior Court of California
County of San Francisco

San Francisco Beautiful, et al.,
Plaintiff,

vs.

City & County of San Francisco,
et al., Respondents.

Case Number: CGC-09-511535

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, Audrey Huie, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On **November 14, 2011** I served the attached **Order Granting Petitioners' Motion To Stay** by placing a copy thereof in a sealed envelope, addressed as follows:

Susan Brandt-Hawley, Esq.
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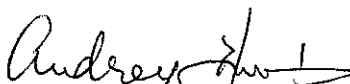
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and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: November 14, 2011

Clerk of the Court

By: 

Audrey Huie, Deputy Clerk