



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
July 11, 2012**

**TO:** Mayor and City Council  
**FROM:** Anjana Mepani, Associate Planner  
**SUBJECT:** Public hearing on an Appeal to Approve Use Permit and Design Review Application Permit #12PLN-0002, for an Installation of a new co-located Wireless Telecommunications Facility by Verizon Wireless  
**DATE:** July 2, 2012

**RECOMMENDATION:**

Conduct a public hearing on an appeal of the Planning Commission decision to approve Use Permit and Design Review application Permit #12PLN-0002, for an installation of a new co-located wireless telecommunications facility by Verizon Wireless on an existing PG&E tower located on a private residential lot at 814 Carter Acres Lane. Consideration and possible adoption of resolution and conditions of approval denying the appeal and approving requested Use Permit and Design Review application Permit #12PLN-0002.

**BACKGROUND:**

On April 24, 2012, the Planning Commission approved Use Permit and Design Review application Permit #12PLN-0002 for the installation of a new co-located wireless telecommunications facility by Verizon Wireless on an existing PG&E tower located on a private residential lot at 814 Carter Acres Lane. Verizon Wireless is proposing to install a new wireless telecommunications facility by adding a 12-foot lattice top hat extension structure and 9 antennas to the top of an existing approximately 162 foot tall PG&E tower. They are also proposing to place an equipment enclosure at the base of the tower.

The Planning Commission approved on a 6 ayes and 1 abstained vote on a motion to approve the project with some minor modifications to the condition of approval (Attachment #1 – Draft Planning Commission Minutes, Planning Commission Approval Letter, and PC Conditions of Approval). The Planning Commission’s decision was appealed on May 4, 2012, by Simone St. Clare and Christine Scharmer, residents of Carter Acres Lane, primarily claiming procedural issues (Attachment #2 – Appeal Letter).

Prior to the Planning Commission meeting, the project was reviewed by the Design Review Committee (DRC) on March 28, 2012. The DRC reviewed the top hat design, antennas, and equipment materials and colors, and no changes were suggested for the items to be placed at the top of the tower. However, the DRC did recommend that the fence for the equipment enclosure be treated with a stain preservative or natural stain. The DRC’s recommendation for staining the fence was added as a condition of approval.

Further, as part of preliminary project review, a study session with the Planning Commission was held to discuss the project and receive public comments on December 13, 2011 (Attachment #3 – Planning Commission Study Session Minutes). At the study session, the Planning Commission provided comments to Verizon Wireless on the project and requested that access issues regarding the private road be resolved. Verizon’s legal counsel, McGuire Woods LLP, provided an opinion in a letter, which the City accepts, that under the lease between Verizon Wireless and Michael Hansen and Norma Hansen (Trustee of the Hansen Family Trust) for construction, operation, and maintenance of a communications facility, Verizon Wireless has the right to access the leased portion of the property via Carter Acres Lane. The letter includes that Hansen’s have the right to grant Verizon Wireless such access rights over Carter Acres Lane because they are the owner of a non-exclusive easement for access and utility purposes encompassing Carter Acres Lane. The easement is apparent to the property and is shown as Parcel Two in the legal description found in the title report for the property (Attachment #4 – Verizon Legal Counsel Letter and Title Report). The letter from Verizon’s legal counsel includes that Verizon Wireless has agreed to pay \$30,000 into the Carter Acres Community Road Fund for future improvements to be made to Carter Acres Lane. The letter from Verizon’s legal counsel was sent by Verizon’s consultant Ridge Communications, Inc. to the residents of Carter Acres Lane, however two of the residents disagreed with Verizon’s legal counsel’s opinion (Attachment #5 – Applicant’s Letter to Residents of Carter Acres Lane regarding access and Attachment #6 – Ms. St. Clare and Mr. & Mrs. Scharmer’s Letter). Should these residents wish to pursue their claims, it would be a private dispute to be resolved in a forum separate from the City’s use permit review. Such a legal conflict between the private property owners and Verizon Wireless would be similar to the access/rights litigation that took place between the residents (DeVito, Buell, Brooke) of Carter Acres Lane and Cingular (now T-Mobile) in 2001/2002. Further, Ridge Communications, Inc. has provided a detailed letter addressing the comments from the study session (Attachment #7 – Applicant’s Letter dated March 5, 2012, addressing Study Session comments, etc.).

**Proposed Project:** The existing Pacific Gas and Electric Company (PG&E) utility tower and easement are located on a private residential lot at 814 Carter Acres Lane. The subject property has a lot size of 2.27 acres (99,055 sq. ft.) and contains one single-family residence, which is located over 100 feet away from the tower. The PG&E 100-foot right-of-way easement traverses along a portion of Carter Acres Lane and the PG&E tower is located at the western edge of the subject property. Further, T-Mobile currently operates a wireless telecommunications facility at the PG&E tower, which consists of antennas on the tower and an equipment area at the base of the tower.

The subject property is located in a residential zoning district, where pursuant to Martinez Municipal Code (MMC) Chapter 22.39, “Wireless Telecommunications Facilities,” a Use Permit and Design Review approval is required for any wireless facility installation. The subject property is located in a residential neighborhood, where many of the surrounding single-family residences are also located on large lots. According to Ridge Communications, Inc., the nearest residence besides the Hansen residence is more than 200 feet away (Attachment #8 – Letter from Ridge Communications, Inc. dated October 28, 2011). To the north of the subject property is the Briones Horse Center and Briones Regional Park is located nearby. On July 6, 2011, Ridge Communications, Inc. held a neighborhood meeting at the Hansen residence with the property owners that reside on Carter Acres Lane to describe the project and to answer questions.

Verizon Wireless is proposing to install a new wireless telecommunications facility by adding a 12-foot lattice top hat extension structure and 9 antennas to the top of an existing approximately 162 foot tall PG&E tower. They are also proposing to place an equipment enclosure at the base of the tower. Verizon Wireless will be leasing an approximately 473 sq. ft. area within the towers footprint. According to Verizon Wireless, the proposed facility is needed to provide cell and LTE coverage to Alhambra Valley and the surrounding area that currently receive no or inadequate Verizon wireless coverage (Attachment #9 – Coverage Maps). The improved network coverage would effectively meet the wireless service needs and expectations of Verizon’s customer base, which consist of local area residents, commuters, and professionals in the area.

The wireless facility will operate unmanned and the equipment will be serviced twice monthly. Further, a noise study was conducted for the proposed equipment area along with the noise generated from the existing T-Mobile equipment area and the noise requirements set in the MMC Chapter 8.34.020 will be met (Attachment #10 – Noise Study). In addition, a Radio Frequency Radiation Report for the project demonstrates that the proposed wireless facility, along with the operation of the other wireless carrier, will be within the permissible public exposure standards set by the Federal Communications Commission (FCC) (Attachment #11 – Radio Frequency Radiation Report). It should be noted that the Telecommunications Act of 1996 states that no state or local governmental entity may regulate the placement, construction, or modification of wireless facilities on the basis of environmental effects of radio frequency (RF) emissions to the extent that the emissions comply with FCC regulations.

**Use Permit:** A Use Permit is required to permit a wireless telecommunications facility of this type. The “Wireless Telecommunications Facilities” ordinance (MMC Chapter 22.39) promotes co-location of wireless facilities to reduce the amount of wireless facility sites, which applies to the project. Co-location occurs when a single tower or building supports one or more antennas, dishes, or similar devices owned by more than one public or private entity, such as multiple wireless carriers. Also, in order for a wireless telecommunications facility to be located in a residential area the applicant must demonstrate that no other feasible alternative site exists. Based on Verizon Wireless’ coverage objective, *“this site is considered a coverage site which means it will provide Verizon Wireless coverage to a surrounding area that currently has no or poor cell coverage. Faced with the continued demand and utilization of wireless communications services, Verizon Wireless is working to improve network coverage to effectively meet the needs and expectations of its customer base. The proposed facility is necessary to provide adequate wireless service to local area residents, commuters, and professionals in the area. The lack of coverage presents an issue of concern in the event of an emergency when call volume is highest. In the case of accidents, fires, seismic events or other disasters, adequate coverage is needed to handle call volume on the network. Without it calls cannot be made or received, a serious issue for public safety in the event of an emergency.”* According to Ridge Communications, Inc., the alternative site evaluated is the *“PG&E tower adjacent to the west of the proposed tower along the same line. This tower is located on unimproved land owned by East Bay Regional Park District within Briones Park. This tower was looked at because it was the only other co-locatable facility in the search ring that provided adequate coverage. VZW [Verizon Wireless] was unable to gain access to the tower and it was therefore eliminated. There were no other viable alternative sites without the need for a monopole.”* (Attachment #9 – Coverage Maps and Attachment #12 – Alternative Site Analysis) Section 332(c)(7) of the Telecommunications Act of 1996 preserves local authority over zoning and land use decisions for personal wireless service facilities, but sets forth specific limitations

on that authority. Particularly, a local government authority may not unreasonably discriminate among providers of functionally equivalent services. Currently, T-Mobile operates a wireless telecommunications facility at the subject property and at the existing PG&E tower. To deny a new co-location at the subject property could violate the non-discrimination provision of the Telecommunications Act of 1996.

**Design Review:** The existing PG&E tower is approximately 162 feet high, with existing antennas that belong to T-Mobile located at 67.9 feet high. Verizon Wireless is proposing to add a 12-foot lattice extension/top hat structure to the existing tower, thus bringing the overall tower height to approximately 174.2 feet. A top hat is an industry term that refers to a tower extension structure to separate cell antennas from power lines. It should be noted that utility poles and towers are not subject to height limits (MMC §22.34.170B). Further, the nine antennas proposed to be placed on the top hat will be located on three sectors around the extension, with three antennas mounted per sector, with the top of the antennas at approximately 174.2 feet in height. To gain the required separation from the PG&E power lines and to get necessary coverage the top hat will accommodate the antennas. The antennas are proposed to be mounted on the top hat extension level to provide Verizon Wireless network coverage to the surrounding area that currently has no or poor Verizon cell service. Thus, the top hat will be designed to look like an extension of the PG&E tower. The lattice top hat extension and antennas will be painted to match the existing PG&E tower.

The proposed equipment enclosure will be located within the footprint of the tower, next to an existing equipment area belonging to T-Mobile. At grade, the equipment within the enclosure will not be visible above the 8-foot solid wooden fence line and the fence corners have been adjusted for better visibility around the tower. DRC recommended that the fence have a stain preservative or natural stain. Further, the antennas on the top hat will be visible to the surrounding area in general. Verizon Wireless has provided photo simulations with various views of the lattice top hat extension, antennas, and equipment enclosure (Attachment #13 – Photo Simulations).

#### FINDINGS FOR THE ADOPTION OF USE PERMIT AND DESIGN REVIEW:

**Use Permit Findings:** In order to deny the appeal and approve the Use Permit application, the City Council is required to make the following findings, under the Zoning Ordinance (in bold below). Staff's analysis of the facts contained in the record which are in support of the finding are presented below following each required finding.

- (a) **The proposed location of the conditional use is in accord with the objectives of the zoning code, and the purposes of the district in which the site is located.**

##### Facts in Support of Finding:

###### 1) Zoning Code Objectives and General Plan

The Zoning Ordinance at Title 22, "Zoning" provides at §22.02.010 that Title 22 is adopted to "protect and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare of the public..." Section 22.02.010 lists specific objectives, including the following:

- To implement the objectives of the General Plan in all its elements...to guide, control and regulate the maintenance, change, growth and development of the City.
- To foster a harmonious, convenient, workable relationship between land uses.

- To promote the stability of existing land uses which conform to the General Plan and to protect them from inharmonious influences and harmful intrusions.
- To ensure that public and private lands ultimately are used for the purposes which are most appropriate and beneficial from the standpoint of the City as a whole.

The General Plan land use designation for the Project site is CUL: Open Space/Conservation Use Land. The General Plan provides for limited low density residential development in the area of the Project. The Project will continue to preserve the hillside topography and will not alter the stability of existing land uses in the area by utilizing the existing utility tower and tower footprint and avoiding the need to construct a new or additional monopole structure in the area. Further the Project will locate additional services in an area where similar development, including the existing T-Mobile facility on the same tower, already exists. The Project will be consistent with the General Plan and the goals, policies and directions set forth above.

## 2) Residential District Requirements

The purposes of the R - Residential Districts, including the R-80 District, are set forth in the Zoning Ordinance at Title 22, Chapter 22.12 "Residential Districts." These purposes include the following:

- Provide space for community facilities needed to complement urban residential areas.
- Minimize traffic congestion and to avoid the overloading of utilities by preventing the construction of buildings of excessive size in relation to the land around them.
- Protect residential properties from noise, illumination, unsightliness, odors, dust, dirt, smoke, vibration, heat, glare, and other objectionable influences.

Verizon Wireless is proposing to provide network coverage to the surrounding area that currently has no or poor Verizon Wireless cell service, improving a needed community service. In order to be located in a residential area, Verizon Wireless has demonstrated that no other feasible alternative site exists (Attachment #12 – Alternative Site Analysis). Further, the equipment will make minimal noise (less than 60dB) and will require maintenance twice monthly, not significantly increasing traffic activity at the site.

## 3) Environmental Conservation District Requirements

The intent of the "Environmental Conservation District" (ECD), is set forth in the Zoning Ordinance at Title 22, Chapter 22.24. ECD's are established as companion districts, to be used in conjunction with residential, industrial or undesignated use districts. ECD's are included in the zoning regulations to accomplish the following objectives:

- To implement the provisions of the open space, conservation, seismic safety and scenic roadway elements of the General Plan.
- To provide for the accommodation of a level of development consonant with the protection of environmental values in those portions of the City with high natural environmental qualities.
- To protect the health, safety and welfare of residents of the City through the protections and preservation of the community environment.

The proposed Project will be a co-located facility, on an existing PG&E tower, which avoids the potential environmental impact of developing a separate new wireless facility site in the City. The equipment for the wireless telecommunication facility will be fenced and secured within the footprint of the tower, on a residentially developed parcel. The proposed Project will continue to preserve the hillside topography of the surrounding area and will not alter the stability of existing land uses by utilizing the existing utility tower and tower footprint and avoiding the need to construct a new or additional monopole structure in the area. Further, the proposed Project will meet the FCC's requirements for permissible human exposure levels to Radio Frequency Radiation and will be compliance with allowable exterior noise levels (60dB) in residential areas.

#### 4) Wireless Telecommunications Facilities Requirements

As set forth in the Zoning Ordinance at §22.39.050(3) "Permit and Review Requirements", wireless telecommunications facilities which cannot be acted upon or granted pursuant to or do not meet the criteria for Administrative Design Review (§22.39.050(1)) or Zoning Administrator Approval (§22.39.050(2)), require Use Permit and Design Review pursuant to Chapter 22.40 "Conditional Uses -- Use Permits" of the Martinez Municipal Code. Chapter 22.39, "Wireless Telecommunications Facilities" of the Martinez Municipal Code, seeks to accomplish the goal of ensuring that the broad range of telecommunications services and high quality telecommunications infrastructure are provided to serve the community.

Further, the "Wireless Telecommunications Facilities" ordinance (Martinez Municipal Code Chapter 22.39) promotes co-location of wireless facilities to reduce the number of wireless facility sites, which applies to the project. Co-location occurs when a single tower or building supports one or more antennas, dishes, or similar devices owned by more than one public or private entity, such as multiple wireless carriers. Also, in order for a wireless telecommunications facility to be located in a residential area the applicant must demonstrate that no other feasible alternative site exists. Verizon Wireless considered an alternate site on an existing PG&E tower in Briones Regional Park. However, they were unable to gain access to the tower, which was the only other co-locatable site in the search ring to provide adequate service. There were no other viable alternative sites without the need for a new monopole, which would not be consistent with the City's co-location policy and would have more intrusive visual impact.

In addition, the Project consists of construction that is appurtenant to the existing PG&E facility. The Project involves installing a new wireless telecommunications facility by adding a 12-foot lattice top hat extension structure and 9 antennas to the top of an existing PG&E tower, and placing an equipment enclosure at the base of the tower. As proposed, the proposed wireless telecommunication facility is appropriate for the residential Project site because of the existing PG&E tower with the other wireless carrier that is already located there. Co-location of wireless telecommunication facilities is promoted to condense the number of sites with such facilities.

- (b) The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.**

Facts in Support of Finding: The Project will be a co-located facility, which is promoted by the “Wireless Telecommunications Facilities” ordinance (Martinez Municipal Code Chapter 22.39), to reduce the number of wireless facility sites in the City. Also, in order to be located in a residential area, Verizon Wireless has demonstrated that no other feasible alternative site exists. The equipment for the wireless telecommunication facility will be fenced and secured. The equipment will make minimal noise and will require maintenance twice monthly, not significantly increasing traffic activity at the site. For the foregoing reasons, the Project as proposed will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.

- (c) The proposed conditional use will comply with each of the applicable provisions of Title 22 of the Martinez Municipal Code.**

Facts in Support of Finding: The Project complies with each of the applicable provisions of Title 22-Zoning of the Martinez Municipal Code and the standards and criteria for telecommunication facilities, including co-location preference on existing power poles/towers, requirements for permissible human exposure levels to Radio Frequency Radiation, and compliance with allowable exterior noise levels (60dB) in residential areas.

The “Wireless Telecommunications Facilities” ordinance (MMC Chapter 22.39) promotes co-location of wireless facilities to reduce the number of wireless facility sites, which applies to the Project. Co-location occurs when a single tower or building supports one or more antennas, dishes, or similar devices owned by more than one public or private entity, such as multiple wireless carriers. Currently, T-Mobile operates a wireless telecommunications facility at the subject property and at the existing PG&E tower.

In addition, the Project meets the Federal Communications Commission (FCC) requirements for levels of Radio Frequency Radiation. The Radio Frequency Radiation Report provided by the applicant calculated the cumulative maximum exposure level at ground to 0.16% of the applicable FCC standard, and at a second floor elevation to 0.19% of the applicable FCC standard for limiting public exposure to radio frequency energy (Attachment #11 – Radio Frequency Radiation Report). The noise study provided by the applicant calculated the cumulative noise level at the nearest property line at 48.8dB and with additive noise daytime noise levels at 51.5 dB, complying with the City’s maximum allowable exterior noise level of 60dB (Attachment #10 – Noise Study).

**Design Review Findings:** In order to deny the appeal and approve the Design Review application, the City Council is required to make the following findings, under the Zoning Ordinance (in bold below). Staff’s analysis of the facts contained in the record which are in support of the finding are presented below following each required finding.

- (a) **Complying with all other applicable provisions of the Martinez Municipal Code involving the physical development of buildings, structures and property, including use restrictions.**

Facts in Support of Finding: The proposed wireless telecommunication facility complies with all other applicable provisions of the Martinez Municipal Code including co-location preference on existing power poles/towers, requirements for permissible human exposure levels to Radio Frequency Radiation, compliance with allowable exterior noise levels (60dB) in residential areas, and is also consistent with the design review criteria and standards.

The “Wireless Telecommunications Facilities” ordinance (MMC Chapter 22.39) promotes co-location of wireless facilities to reduce the number of wireless facility sites, which applies to the Project. Co-location occurs when a single tower or building supports one or more antennas, dishes, or similar devices owned by more than one public or private entity, such as multiple wireless carriers. Currently, T-Mobile operates a wireless telecommunication facility at the subject property and at the existing PG&E tower.

In addition, the Project meets the Federal Communications Commission (FCC) requirements for levels of Radio Frequency Radiation. The Radio Frequency Radiation Report provided by the applicant calculated the cumulative maximum exposure level at ground to 0.16% and at a second floor elevation to 0.19% of the applicable FCC standard for limiting public exposure to radio frequency energy (Attachment #11 – Radio Frequency Radiation Report). The noise study provided by the applicant calculated the cumulative noise level at the nearest property line at 48.8dB and with additive noise daytime noise levels at 51.5 dB, complying with the City’s maximum allowable exterior noise level of 60dB (Attachment #10 – Noise Study).

- (b) **Provides desirable surroundings for occupants as well as for neighbors. Emphasis is placed upon exterior design with regard to height, bulk, and area openings; breaks in the facade facing on a public or private street; line and pitch of the roof; and arrangement of structures on the parcel.**

Facts in Support of Finding: The Project would be a co-located facility, which is promoted by the “Wireless Telecommunications Facilities” ordinance (Martinez Municipal Code Chapter 22.39) to reduce the number of wireless facility sites in the City. Also, in order to be located in a residential area, Verizon Wireless has demonstrated that no other feasible alternative site exists. Verizon Wireless has designed the top hat to look similar to the PG&E tower and will paint the top hat, antennas, and brackets the match the tower. The equipment will comply with all FCC regulations and will be serviced twice monthly, which will not have a significant impact on traffic and activity at the site. The telecommunication site will only create a negligible amount of noise and will give off no fumes or odors.

- (c) **Has a harmonious relationship with existing and proposed neighboring developments avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted.**

Facts in Support of Finding: The Project will fit in with the site since it is similar to the other wireless facility at the site and the top hat, antennas, and brackets will resemble the PG&E towers materials and colors, allowing similarity of style. In addition, the proposed wireless facility will not exceed noise levels as set by the City's Noise Ordinance and will be in compliance with all FCC radio frequency regulations.

- (d) **Uses a limited palette of exterior colors; those colors must be harmonious and architecturally compatible with their surrounding environment.**

Facts in Support of Finding: A limited palette of exterior colors would be used, since Verizon Wireless will paint the top hat, antennas, and brackets to match the existing PG&E tower. Also, the wooden fence surrounding the equipment enclosure will have a stain to blend in with the base and footprint of the utility tower.

- (e) **Uses a limited number of materials on the exterior face of the building or structure. In addition, all interior surfaces normally visible from public property shall be finished.**

Facts in Support of Finding: A limited number of exterior materials will be used since Verizon Wireless will use materials that are similar to and resemble the PG&E tower for the 12' top hat lattice structure. The fence surrounding the equipment enclosure at the base of the tower will be made of wood and stained per the Design Review Committee's recommendation.

- (f) **Has exterior lighting appropriately designed with respect to convenience, safety, and effect on occupants as well as neighbors.**

Facts in Support of Finding: This standard is not applicable to the Project since no exterior lighting is proposed for the proposed Project.

- (g) **Effectively concealing work areas, both inside and outside of buildings, in the case of non-residential facilities.**

Facts in Support of Finding: The equipment cabinets and work area within the enclosure will be concealed by the 8-foot solid wooden fence at the tower's base.

- (h) **Under grounding all utility boxes unless it can be shown that they can be effectively screened from the view of the general public.**

Facts in Support of Finding: The utility boxes in the equipment enclosure will be screened from view of the general public by the 8-foot solid wooden fence.

- (i) **Designing the type and location of planting with respect to the preservation of specimen and landmark trees, water conservation as set forth in Chapter 22.35, and maintenance of all planting.**

Facts in Support of Finding: This standard is not applicable to the Project as no trees are proposed to be removed or installed as a result of the proposed Project.

- (j) **Establishing a circulation pattern, parking layout and points of ingress and egress (both vehicular and pedestrian), designed to maximize pedestrian safety and convenience and to minimize traffic congestion resulting from the impediment of**

**vehicular movement. When applicable, access for handicapped individuals should be considered.**

Facts in Support of Finding: This standard is not applicable to the Project since the wireless facility will operate unmanned and the equipment in the enclosure will only be serviced twice monthly by Verizon Wireless.

- (k) **Ensuring that all signs be designed so that they are in scale with the subject development, and will not create a traffic hazard. Emphasis is placed upon the identification of the use or building rather than the advertising of same.**

Facts in Support of Finding: This standard is not applicable to the Project as no identification or advertising signage is proposed to be installed for the proposed Project.

- (l) **Substantially preserves views from nearby properties where this can be done without severe or undue restrictions on the use of the site, balancing the property rights of the applicant and the affected property owner(s).**

Facts in Support of Finding: Given that the top hat will be designed to resemble the existing PG&E tower; the top hat, antennas, and brackets materials and paint will match the existing tower; the overall height of the tower will increase approximately twelve feet; and the equipment enclosure will be located at the base and within the footprint of the tower, the Project will not result in any significant view loss and views from nearby properties will substantially be preserved.

#### GENERAL PLAN CONSISTENCY FINDINGS:

Staff has analyzed the General Plan in relation to the proposed Project. The Project is consistent with the Martinez General Plan policies and with the land use designation of CUL: Open Space/Conservation Use Land, including but not limited to the policies mentioned below.

- (a) **22.41 – Open Space Element, Conservation Lands Policies: Large scale alteration of the topography to accommodate incompatible development patterns is prohibited to prevent severe erosion and hydrologic hazard.**

Facts in Support of Finding: The General Plan provides for limited low density residential development in the area of the Project. The Project will continue to preserve the hillside topography and will not alter the stability of existing land uses in the area by utilizing the existing utility tower and tower footprint. The Project consists of construction that is appurtenant to the existing PG&E facility. Specifically, the Project involves installing a new co-located wireless telecommunications facility by adding a 12-foot lattice top hat extension structure and 9 antennas to the top of an existing PG&E tower, and placing an equipment enclosure at the base of the tower. Verizon Wireless will construct the top hat to look similar to the PG&E tower and will paint the top hat, antennas, and brackets the match the tower.

#### CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS:

The Project is categorically exempt from the requirements of CEQA, under the State of California - California Code of Regulations Title 14, Chapter 3, §15301 - Existing Facilities and §15311 - Accessory Structures. The Project consists of construction that is appurtenant to the existing PG&E facility. The Project involves installing a new wireless telecommunications facility by adding a 12-foot lattice top hat extension structure and 9 antennas to the top of an

existing PG&E tower, and placing an equipment enclosure at the base of the tower. Existing facilities consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use (§15301). This includes existing facilities used to provide public utility services. The Project would be a minor alteration of the existing PG&E tower, which is a private structure that provides public utility services. The project involves negligible or no expansion of existing use because the PG&E tower already provides utility services and hosts T-Mobile equipment used to provide wireless telecommunications services.

The accessory structures exemption consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure (§15311). This includes the construction of limited numbers of utility extensions. The Project would be a limited utility extension and the equipment enclosure in the tower footprint consists of the installation of small new equipment and facilities in small structures.

The Project site is not in a particularly sensitive environment. The site is a residentially developed lot upon which there are no environmental resources designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. There are no projects in the area which could result in cumulative impacts of the same type in the same place. The Project site is part of a standard subdivision, on a developed residential lot without any endangered species, riparian habitats, or protected wetlands. The site is not within an officially designated state scenic highway, as there are no state scenic highways located in the City of Martinez. The Project site is not included on any list compiled pursuant to §65962.5 of the Government Code for hazardous waste sites. The Project will not affect historical resources, as the PG&E tower and existing residence are not historically significant.

#### APPEAL DISCUSSION:

In the following discussions, staff has summarized the appeal claims set forth by the appellants and provided responses to the claims.

#### **APPEAL ISSUE #1 – PLANNING COMMISSION NOTICE OF PUBLIC HEARING**

Appellants Claim: *“The Notice of Public Hearing was deficient in that the agenda item was to potentially grant the application on the grounds that the permit was exempt from CEQA based upon an Existing Facilities exemption. However, the Planning Commission determined that the permits should be issued since the Federal Communications Act of 1996 pre-empted the City from acting. Neither the issue of preemption nor the Federal Communications Act of 1996 is mentioned anywhere in the Notice of Public Hearing. This is a violation of the letter and spirit of the statutory requirements for providing notice to the public of the items and actions to be taken by the Planning Commission.”*

Response: Based on the State of California Government Code §65094, notice of a public hearing shall include the date, time, and place of the public hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description in text or by diagram, of the location of the real property, if any, that is the subject of the public hearing. The notice of public hearing for the Planning Commission meeting of April 24, 2012 and the project complied with §65094. Further, the notice of public hearing provided

information on the CEQA proposed environmental determination and finding for the Planning Commission to adopt (Attachment #14 – Planning Commission Notice of Public Hearing). The Planning Commission approved the project based on findings in the Resolution #12-01 (Attachment #15 – Planning Commission Resolution #12-01).

The Telecommunications Act of 1996 was discussed by the Planning Commission at the April 24, 2012 meeting since a majority of the public comments received dealt with the health and environmental effects of the project. However, the Telecommunications Act of 1996 states that no state or local governmental entity may regulate the placement, construction, or modification of wireless facilities on the basis of environmental effects RF emissions to the extent that the emissions comply with FCC regulations. The Radio Frequency Radiation Report demonstrates that the proposed wireless facility, along with the operation of the other wireless carrier, will be within the permissible public exposure standards set by the FCC (Attachment #11 – Radio Frequency Radiation Report).

#### **APPEAL ISSUE #2 – TELECOMMUNICATIONS ACT OF 1996**

Appellants Claim: *“The Federal Communications Act of 1996 does NOT preempt the City from considering the permit.”*

Response: The Telecommunications Act of 1996 states that no state or local governmental entity may regulate the placement, construction, or modification of wireless facilities on the basis of environmental effects of RF emissions to the extent that the emissions comply with FCC regulations. Specifically, §332(c)(7) of the Communications Act preserves local authority over zoning and land use decisions for personal wireless service facilities, but sets forth specific limitations on that authority. Particularly, a local government authority may not unreasonably discriminate among providers of functionally equivalent services, may not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services, must act on applications within a reasonable period of time, and must make any denial of an application in writing supported by substantial evidence in a written record. The Telecommunications Act of 1996 does not preempt the City of Martinez or the Planning Commission from considering the project, but the statute preempts local decisions premised directly or indirectly on the environmental effects of RF emissions, assuming that the provider is in compliance with the FCC's RF rules.

#### **APPEAL ISSUE #3 – CEQA EXEMPTION**

Appellants Claim: *“The permit is not exempt from CEQA.”*

Response: The project is categorically exempt from the requirements of CEQA, under the State of California - California Code of Regulations Title 14, Chapter 3, §15301-Existing Facilities and §15311-Accessory Structures, because the project consists of construction that is appurtenant to the existing PG&E facility. Existing facilities consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use (§15301). This includes existing facilities used to provide public utility services. The project would be a minor alteration of the existing PG&E tower, which is a private structure that provides public utility services and already hosts T-Mobile equipment used to provide wireless telecommunications services.

The accessory structure exemption consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure (§15311). This includes the construction of limited numbers of utility extensions. The project would be a limited utility extension and the equipment enclosure in the tower footprint consists of the installation of small new equipment and facilities in small structures.

**APPEAL ISSUE #4 – ENVIRONMENTAL CONSERVATION ZONING DISTRICT**

Appellants Claim: *“The permit violates Martinez regulations and ordinances, especially given the subject property is located in an Environmental Conservation District.”*

Response: The zoning for 814 Carter Acres Lane is Residential: R-80 (One-Family Residential: 80,000 sq. ft. minimum lot area) / ECD (Environmental Conservation District). ECD’s are companion districts to be used in conjunction with residential use districts. The ECD chapter was adopted in 1975 and was generally intended to limit the use of those areas seen as being environmentally sensitive lands (“ESL” general plan designation), to one single family home per existing parcel with all subdivisions and that all other uses that would otherwise be permitted or conditionally permitted in the residential zone be subject to further environmental review, such as an “environmental impact report.” Wireless telecommunications facilities are regulated through Chapter 22.39 of the Zoning Ordinance (Wireless Telecommunications Facilities adopted in 1997), where there is no requirement for the preparation of an environmental impact report. Section 22.39.050 of the Zoning Ordinance provides the permit and review requirements for wireless telecommunications facilities for all zoning districts including those within the ECD. Nowhere in the Zoning Ordinance does the ECD district prohibit wireless telecommunications facilities and in fact there is a T-Mobile wireless facility at the subject property, the same site for which this co-location is sought.

**APPEAL ISSUE #5 – PLANNING COMMISSION NOTICE OF PUBLIC HEARING MAILING LIST**

Appellants Claim: *“The hearing of April 24, 2012 was improperly noticed. There are 13 lots within the Reliez Valley Homeowners Association where the private lot and the proposed cell antennae installation is located. Only 5 of the 13 lots were given notices of the hearing.”*

Response: Based on the State of California Government Code §65091.a.4 - Notification Procedures, the notice of hearing shall be mailed or delivered at least 10 days prior to the hearing to all owners of real property within 300 feet of the real property that is subject of the hearing. The notice of public hearing for the Planning Commission meeting of April 24, 2012 and the project was mailed to the property owners within a 300 foot radius of 814 Carter Acres Lane and to all the property owners located along Carter Acres Lane, thus complying with the notification procedure set forth in §65091.a.4. Properties within a subdivision but outside the 300 ft radius are not required to be provided a separate mailed notice. However, in addition to the mailed notice, the notice of the public hearing was published in the Martinez News-Gazette and was also posted at the subject property and at City Hall.

**ISSUE RAISED IN LATE-FILED CORRESPONDENCE**

In a letter submitted after the appeal was filed, appellants’ counsel raises various procedural issues, including the argument that an environmental impact report is required pursuant to Section 22.24.040, Martinez Municipal Code. As a threshold matter, any issues not identified in the notice of appeal are not timely raised because the Code requires the notice of appeal to

identify the specific legal and/or factual errors alleged to exist. In addition, the reference to an “environmental impact report” in Section 22.24.040 must be understood in light of Sections 22.34.020 and Title 20 of the Code to which the former Section explicitly refers. Section 22.34.020 requires the City to determine whether the California Environmental Quality Act (“CEQA”) applies to the decision in question, and Title 20 sets forth procedures for making that determination, including the incorporation by reference of the State CEQA Guidelines (Section 20.04.020), which include the categorical exemptions under Sections 15301 and 15311 of the CEQA Guidelines.

**FISCAL IMPACT:**

None.

**ACTION:**

Motion to adopt a resolution and conditions of approval denying the appeal and approving requested Use Permit and Design Review application Permit #12PLN-0002.

Attachments:

- 1) Draft Planning Commission Minutes, Planning Commission Approval Letter, and PC Conditions of Approval
- 2) Appeal Letter
- 3) Planning Commission Study Session Minutes - December 13, 2011
- 4) Verizon Legal Counsel Letter and Title Report
- 5) Applicant’s Letter to Residents of Carter Acres Lane regarding access
- 6) Ms. St. Clare and Mr. & Mrs. Scharmer’s Letter
- 7) Applicant’s Letter dated March 5, 2012, addressing Study Session comments, etc.
- 8) Letter from Ridge Communications, Inc. dated October 28, 2011
- 9) Coverage Maps
- 10) Noise Study
- 11) Radio Frequency Radiation Report
- 12) Alternative Site Analysis
- 13) Photo Simulations
- 14) Planning Commission Notice of Public Hearing
- 15) Planning Commission Resolution #12-01
- 16) Planning Commission Staff Report
- 17) Plan Set
- 18) Site Context Map
- 19) Resolution and Conditions of Approval
- 20) Letter from Appellants’ Counsel – Appeal Outline
- 21) Letter from Verizon’s Counsel – Applicants’ Comments

**APPROVED BY:**



City Manager

Planning Commission Minutes  
Regular Meeting  
April 24, 2012  
Martinez, CA

**CALL TO ORDER**

The meeting was called to order at 7:01 p.m. with all members present.

Staff present: Associate Planner Anjana Mepani.

**ROLL CALL**

PRESENT: Donna Allen, Commissioner, Harriett Burt, Commissioner, Rachael Ford, Commissioner, Jeffrey Keller, Commissioner, Paul Kelly, Commissioner, Sigrid Waggener, Commissioner, and Kimberley Glover, Commissioner.

EXCUSED: James Blair, Commissioner (Alternate).

ABSENT: None

**AGENDA CHANGES**

None.

**PUBLIC COMMENT**

None.

**CONSENT ITEMS**

1. [Minutes of March 13, 2012, meeting.](#)

On motion by Donna Allen, Commissioner, seconded by Kimberley Glover, Commissioner, to approve the Minutes of March 13, 2012, meeting. Motion unanimously passed 7 - 0. Yes: Donna Allen, Commissioner Harriett Burt, Commissioner Rachael Ford, Commissioner Jeffrey Keller, Commissioner Paul Kelly, Commissioner Sigrid Waggener, Commissioner, Kimberley Glover, Commissioner.

**REGULAR ITEMS**

2. [Verizon Wireless 12PLN-0002 Public hearing to consider a proposal for an installation of a new co-located wireless telecommunication facility on an existing PG&E tower located on a private residential lot. The proposed project consists of adding a 12' lattice structure, with 9 antennas, on top of the existing approximately 162' tall tower. Verizon will be leasing an approximately 473 sq. ft. area within the tower footprint for an equipment enclosure. The proposed project is located in a residential zoning district, which requires a Use Permit & Design Review. This project is located on a PG&E Tower](#)

at 814 Carter Acres Lane (APN 365-150-053)

Applicant: Verizon/Ridge Communications, Inc. - Clarence Chavis (AM)

Associate Planner Anjana Mepani presented the staff report, including a change to the Conditions of Approval requested by Verizon. She noted that staff recommends approval of the item.

Chair Ford asked for more information about the change requested by Verizon, as well as the purpose of the bond. Ms. Mepani explained that the bond requirement is in the City Code, but it has not been enforced.

Chair Ford opened the public hearing.

Clarence Chavis, Ridge Communications for Verizon Wireless, discussed details about the site selection and the need for a new antenna to boost the signal, as well as public outreach, the previous study session with the Planning Commission, Design Review Committee comments, concerns of the City Engineer, legality of Verizon's right to access, the \$30,000 to be paid by Verizon for necessary road improvements.

Chair Ford asked what the turnaround time would be for a Radio Frequency report. Mr. Chavis said 2-3 weeks. Chair Ford asked whether other jurisdictions have required an RF report. Mr. Chavis said yes.

Commissioner Kelly asked whether the RF study would be done by Ridge Communication employees or an independent consultant. Mr. Chavis said by an independent consultant.

Commissioner Kelly asked why a 3G antenna is proposed when 4G technology is already out. Mr. Chavis said it will be 4G and LTE.

Vice Chair Keller asked if they considered another PG&E tower down the road. Mr. Chavis said yes, but the elevation at that location would hamper the signal.

Commissioner Kelly asked whether the \$30,000 would go directly to the Carter Acres homeowners association. Mr. Chavis said yes.

CHRISTINE SCHARMER, retired schoolteacher and author of Raising Mario Twice, discussed the brain injury experienced by her son, Mario, due to a car accident. Indicated she is opposed to cell phone towers because of potential health impacts, particularly on an already-impacted person. She also commented on a neighbor recovering from cancer. She was concerned about the 24-7 use of the road, and she noted that there is a restriction on home businesses in the neighborhood so why is Verizon allowed a business in the area. She asked for a thorough environmental study if the application goes forward.

KEN BARTIZAL commented on his own experience with a traumatic brain injury. He was concerned about potential health issues, and He questioned whether accepted standards apply to those with existing health problems. He asked for a full environmental study.

MIGUEL SCHARMER questioned whether cell phone towers could cause side effects on fertility and developing fetuses, since he hopes to have a family soon. He asked for consideration of the residents' needs.

CHUCK SASATO discussed the increasing number of cell phone antennas. He was especially concerned about cumulative impacts.

RHETA WILLIS expressed concern about potential impacts to existing wildlife. She was opposed to the approval.

SIMONE ST CLARE distributed a letter from Mike Hansen, owner of the property, in which he stated he's now against moving forward on the Verizon antennas. She asked the Planning Commission to consider the interests of all the residents. She also discussed CCR requirements and indicated that the homeowners association would file suit if this application is approved. She disagreed with the Hansen's right to grant an easement to Verizon. She was especially concerned because her home is the closest to the proposed location, and she indicated that the goals in the City's General Plan to ensure the safety of the citizenry. She asked for further environmental review.

MARK SCHARMER noted that when original antenna was put in, the neighborhood was not told that there could be more antennas later. He discussed the City's requirements when his family put in a pool, which seem to be greater than what is now required of Verizon. He agreed with earlier comments regarding the decrease in the squirrel population.

DEBRA MOORE commented on the proximity to Briones, and she indicated that Carter Acres Lane is within an environmental conservation district. She echoed earlier requests for a full EIR, to consider impacts on wildlife and residents. She added that CEQA exemptions should not nullify local requirements for environmental review, and she urged the Commission to ensure that is done.

#### Rebuttal

Mr. Chavis said all of Verizon's equipment would be on or below the existing structure, so further environmental study is not required. He added that the combined RF from the existing and proposed antennas fall within FCC standards.

Chair Ford asked about the PG&E towers for which Verizon was not able to get access. Mr. Chavis explained it could be an issue with PG&E or with the property owner.

Chair Ford also asked about the letter from the Hansen's stating they no longer wanted to move forward. Mr. Chavis said he was not aware of the letter, and Mr. Hansen signed a binding contract. Chair Ford asked if the contract would be null and void if the Planning Commission denies the application. Ms. Mepani said not necessarily. In response to a further question, Ms. Mepani discussed the appeal process.

Commissioner Kelly asked if Carter Acres is in an environmental conservation zoning district. Ms. Mepani confirmed it was, but the project is categorically exempt from CEQA.

Chair Ford asked about legal constraints regarding applicable federal law and the Planning Commission's ability to deny the application.

Commissioner Burt confirmed that health issues were not allowed to be considered, based on the federal 1996 Telecommunications Act. Ms. Mepani said as long as it complies with FCC standards, which this does, health issues were not allowed to be the basis for denial.

Commissioner Allen asked about an earlier project with a second story addition, wherein the Planning Commission was advised to return the project to the HOA for resolution of the issues. She said she would like to see the CCRs.

Commissioner Burt noted that at the study session, she asked that representatives from Verizon come to this meeting.

Mr. Chavis said there was a conflicting meeting/conference, so they were unable to attend.

Seeing no further speakers, Chair Ford closed the public hearing.

The Commission confirmed with staff that the Planning Commission cannot deny a cell phone antenna application based on health impacts and environmental exemptions.

Commissioner Burt said this is a frustrating issue, and there is conflicting information regarding the health impacts. She would rather wait to make a decision until a meeting with Verizon representatives in attendance, but she acknowledged the Commission's hands are tied. She also commented on issues with cell phone reception and the need to be able to contact help in emergency situations.

Commissioner Waggener asked what happens when the lease with the landowner expires. Ms. Mepani said it would be a private matter to determine whether to renew the lease or not.

Vice Chair Keller said it is unfortunate that the federal government tied the hands of local jurisdictions. Commissioner Burt said it involved some of the highest lobbying in history.

Commissioner Allen said she would also want more information about the subdivision conditions of approval, Home Owners Association and road access.

Chair Ford observed that even if the approval is delayed, the Planning Commission would still be unable to deny it.

Ms. Mepani said engineering staff would have considered subdivision conditions of approval, Home Owners Association and the access issues during their review.

Chair Ford agreed this is one of the most frustrating issues the Planning Commission faces. She was sympathetic to the neighborhood concerns, but the Planning Commission is limited. She pointed out, however, on the public relations issues that could result from Verizon running roughshod over a neighborhood.

Commissioner Burt suggested postponing action to have a Verizon representative to come before the Planning Commission, and to ensure that access issues have been addressed.

Commissioner Allen asked if the Planning Commission could make conditions of approval requiring Verizon to remove the equipment at the end of the lease and restore the tower to its original condition. Ms. Mepani said yes there is a similar condition in the Conditions of Approval.

Commissioner Allen also asked to add to the resolution that the applicant has agreed to provide costs for an independent RF study within 30 days of being requested, and to pay \$30,000 to go to Carter Acres Lane for road improvements.

Ms. Mepani said those would go in the Conditions of Approval. Chair Ford asked what happens if Verizon doesn't provide the RF study when requested. Ms. Mepani said the City would revoke the use permit, and Code Enforcement would pursue removal of the equipment. The same would apply when the lease expires.

On motion by Donna Allen, Commissioner, to Postpone 2. Verizon Wireless 12PLN-0002 Public hearing to consider a proposal for an installation of a new co-located wireless telecommunication facility on an existing PG&E tower located on a private residential lot. The proposed project consists of adding a 12' lattice structure, with 9 antennas, on top of the existing approximately 162' tall tower. Verizon will be leasing an approximately 473 sq. ft. area within the tower footprint for an equipment enclosure. The proposed project is located in a residential zoning district, which requires a Use Permit & Design Review. This project is located on a PG&E Tower at 814 Carter Acres Lane (APN 365-150-053) Applicant: Verizon/Ridge Communications, Inc. - Clarence Chavis (AM) Motion failed due to lack of a second.

On motion by Donna Allen, Commissioner, seconded by Jeffrey Keller, Commissioner, to Approve 2. Verizon Wireless 12PLN-0002 Public hearing to consider a proposal for an installation of a new co-located wireless telecommunication facility on an existing PG&E tower located on a private residential lot. The proposed project consists of adding a 12' lattice structure, with 9 antennas, on top of the existing approximately 162' tall tower. Verizon will be leasing an approximately 473 sq. ft. area within the tower footprint for an equipment enclosure. The proposed project is located in a residential zoning district, which requires a Use Permit & Design Review. This project is located on a PG&E Tower at 814 Carter Acres Lane (APN 365-150-053) Applicant: Verizon/Ridge Communications, Inc. - Clarence Chavis (AM) Motion unanimously passed 6 - 0. Yes: Sigrid Waggener, Commissioner Harriett Burt, Commissioner Donna Allen, Commissioner Kimberley Glover, Commissioner Rachael Ford, Chair and Jeffrey Keller, Commissioner. Abstain: Commissioner Paul Kelly.

### COMMISSION ITEMS

Commissioner Allen asked why there is a Use Permit requirement for these types of applications if the Planning Commission is limited in its purview. Ms. Mepani explained that the City Council established the process in the telecommunications ordinance.

The Commission asked if the Planning Commission can ask the City Council to reconsider, since

it is an exercise in futility currently.

There was further discussion if it would be possible to remove the UP requirement for PG&E towers located away from residential areas. Ms. Mepani said would it involve an amendment of the City's telecommunication ordinance. The Commission directed staff to research the possibility further.

Commissioner Burt asked if it is included in the General Plan update. Those serving on the subcommittee said at this point it wasn't.

**STAFF ITEMS**

Ms. Mepani indicated there were no staff items.

Commissioner Burt asked about upcoming agenda items. Ms. Mepani said there were none that she was aware of.

Vice Chair Keller asked about the Seeno project. Ms. Mepani had no new information.

**COMMUNICATIONS**

Chair Ford congratulated Main Street Martinez for the successful Brew Festival. Chair Ford adjourned the meeting at 8:24 p.m.

Respectfully Submitted,

Approved by the Planning Commission  
Chairperson

Transcribed by Mary Hougey

Rachael Ford



## City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

(925) 372-3550  
FAX (925) 372-0257

April 27, 2012

Clarence Chavis  
Ridge Communications, Inc.  
12667 Alcosta Blvd., Suite 175  
San Ramon, CA 94583

**SUBJECT: 12PLN-0002 – NEW CO-LOCATED WIRELESS TELECOMMUNICATION FACILITY – 814 CARTER ACRES LANE**

Dear Mr. Chavis:

At its meeting on Tuesday, April 24, 2012, the Martinez Planning Commission approved your request for the installation of a new co-located wireless telecommunication facility on an existing PG&E tower adding a 12' lattice structure, with 9 antennas, on top of the existing 162' tall tower, located on a private residential lot at 814 Carter Acres Lane, Martinez. The Conditions of Approval are attached.

This decision may be appealed to the City Council by yourself or any interested person. There is a 10-day appeal period which ends on Friday, May 4, 2012.

You may proceed in applying for your building permit after the appeal period has expired. For more information on obtaining a building permit, please contact Rigo Casarez, Building Permit Technician, at 372-3550.

Sincerely,

*A. Mepani*

Anjana Mepani  
Associate Planner

Attachment

cc: Rigo Casarez, Building Permit Technician  
Engineering  
File copy  
Chron  
Binder

CONDITIONS OF APPROVAL

AS APPROVED BY PLANNING COMMISSION

Applicant Name: **Verizon Wireless/Ridge Communications, Inc. - Clarence Chavis**

Location: **814 Carter Acres Lane (APN 365-150-053) / PG&E Right-of-Way**

I. Description of Permit

These conditions apply to and constitute the approval of Permit #12PLN-0002 for Use Permit and Design Review application, to allow construction of a new co-located wireless telecommunications facility on an existing PG&E tower located on a private residential lot at 814 Carter Acres. The project consists of adding a 12' lattice structure, with 9 antennas, on top of the existing approximately 162' tall tower. Verizon Wireless will be leasing an approximately 473 sq. ft. area within the tower footprint for an equipment enclosure. The project is located in a residential zoning district, which requires a Use Permit and Design Review.

II. Exhibits

The following exhibits are hereby approved and incorporated as conditions of approval, except where specifically modified by these conditions:

EXHIBIT	DATE RECEIVED	PREPARED BY	PAGES
Site Map, Tower Detail, Site Plan, Equipment Area Layout and Plan, Antenna Layout, Elevations, and Details	April 16, 2012	Delta Groups Engineering, Inc.	7
Photo Simulations	March 16, 2012, and July 15, 2011	AdvanceSim	3
Coverage Maps	October 28, 2011	Verizon Wireless	3

All construction plans and all improvements constructed pursuant to Permit #12PLN-0002 and shall conform to these exhibits. Building permit plans shall include a checklist of these conditions for staff review and verification that the conditions have been met. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Engineering Division, or Building Division as noted.

III. Special Conditions that Apply to Permit #12PLN-0002

- A. Antennas, brackets, and top hat shall be painted to match the existing PG&E tower.

- B. Permit applications for wireless telecommunication facilities shall be valid for a period of up to ten (10) years from date of final discretionary approval and may be renewed prior to expiration by administrative action.
- C. **Verizon Wireless has agreed under the Lease (July 13, 2011 Land Lease Agreement between Verizon Wireless and Michael H. Hansen and Norma Hansen [Hansen Family Trust]) to make a one-time payment to the Carter Acres Community Road Fund in the amount of Thirty Thousand Dollars (\$30,000.00) for future improvements to be made to Carter Acres Lane. Verizon Wireless will pay such amount to the Carter Acres Community Road Fund within forty-five (45) days after the commencement date of the Lease.**

IV. Site Plan

- A. Provide site plan that shows all existing features and proposed structures.
- B. Fences, walls and retaining walls:
  - 1. All fencing, retaining walls, etc., shall be shown on the site plan.
  - 2. The equipment enclosure fence shall be wooden with a stain preservative or natural stain. Alternate materials will be subject to staff review and approval.

V. Noise Control and Dust

- A. All construction activities shall be restricted to Monday - Friday and to the hours of 7:00 a.m. to 7:00 p.m. Work on weekends and holidays shall be permitted between 9:00 a.m. to 5:00 p.m. The permittee shall post a sign on the site notifying all workers of this restriction.
- B. Telecommunication facilities shall operate in compliance with the noise exposure standards contained in the City's Noise Control Ordinance, Chapter 8.34 of the Martinez Municipal Code.
- C. Normal testing and maintenance activities shall occur between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding emergency repairs. Normal testing and maintenance activities, which do not involve the use or operation of telecommunications and maintenance equipment that is not audible from residences and other nearby sensitive receptors, may occur at all other times. The level of noise of any equipment used in routine maintenance and repairs shall not exceed the City's noise standards at any adjacent property line.
- D. Backup generators shall comply with the same noise standards referenced above and shall only be operated during power outages, emergency

occurrences, or for testing and maintenance in accordance with item C above.

- E. All construction equipment shall be muffled in accordance with State Law.

VI. Radio Frequency Radiation

- A. Wireless telecommunication facilities operating alone and in conjunction with other telecommunication facilities shall not emit Radio Frequency Radiation (RFR) in excess of the standards for permissible human exposure to RFR as adopted by the Federal Communications Commission (FCC).
- B. The City may require one or more (periodic) post-construction RFR reports as a condition of project approval to verify that actual levels of RFR emitted by the approved facilities, operating alone and in combination with other approved facilities, substantially conform to the pre-approval RFR report and do not exceed current standards for permissible human exposure to RFR as adopted by the FCC.

VII. Lighting

- A. Manually operated, low wattage, hooded and downward directed exterior lighting shall be permitted for safety purposes only and shall not operate except when maintenance or safety personnel are present at night.
- B. Nighttime lighting of warning signs required near publicly accessible facilities must consist of low-wattage fixtures, and must be directed downward and hooded.
- C. Plans submitted for Building Permits shall include a detailed lighting plan including the location and type of all exterior lighting fixtures.

VIII. Grading

- A. All grading shall require a grading and drainage plan prepared by a registered Civil Engineer. A grading permit or a site development permit, as approved by the City Engineer will be required prior to construction.
- B. The on-site finish grading shall require drainage to be directed away from all building foundations at a slope of 5 percent minimum toward approved drainage facilities or swales. Non-paved drainage swales shall have a minimum slope of 1 percent.
- C. Contour grading techniques with spot elevations shall be employed throughout the project to achieve a more natural appearance, even where this will increase the amount of grading.

- D. Erosion control measures shall be implemented per plans approved by the City Engineer for all grading work not completed before October 1. At the time of approval of the improvement and/or grading plans, an approved Erosion Control Plan prepared by a registered Civil Engineer shall be filed with the City Engineer.
- E. The finished grading shall be inspected and certified by the developer's engineer that it is in conformance with the approved Grading Plan and Soils Report pursuant to the provisions of Title 15 of the Martinez Municipal Code.
- F. Any grading on adjacent properties will require written approval of those property owners affected.
- G. If cultural resources are discovered during subsurface excavations, the Contractor shall cease construction and a qualified archeologist shall be contacted to make recommendations for mitigation.
- H. The plans shall include the boundary treatment shown on cross sections, drawn to scale, for retaining walls, fencing and drainage.

IX. Drainage

- A. All concentrated runoff shall be collected and conveyed to an approved storm drainage system. Existing slopes that have no additional discharge directed onto them or are not substantially re-graded can remain as natural runoff.
- B. Applicant shall not increase storm water runoff to adjacent downhill properties unless either, (1) a Drainage Release is signed by the property owner(s) of affected downhill lots and recorded in the office of the County Recorder; or (2) site drainage is collected and conveyed in approved drainage facilities within a private drainage easement through a downhill property. This condition may require collection of on-site runoff and construction of an off-site storm drainage system. All required releases and/or easements should be obtained prior to issuance of the site development or Building Permit whichever comes first.
- C. The developer shall comply with City and Contra Costa County Flood Control District Design requirements.

X. Agreements, Fees and Bonds

- A. All required improvement agreement(s) and all required fees and security deposits in connection with the proposed project shall be submitted to and approved by City and any other agencies having jurisdiction prior to City issuance of the building or site development permit, whichever comes first.

XI. Other Requirements

- A. Construction shall comply with all applicable City and State building codes and requirements including handicapped and energy conservation requirements, grading and erosion control ordinances.
- B. Electrical conduits shall be installed underground in an easement from source to proposed facilities as approved by the City Engineer. Applicant shall be responsible for repairing/replacing any damage to existing facilities and structures including but not limited to landscape, irrigation system, asphalt, curb, gutter, pavement, paths, structures, drainage facilities, utilities, etc.
- C. Applicant shall provide the City with documents from PG&E and the property owner approving installation of the telecommunication facility and equipment on their property.
- D. Complete improvement plans shall be submitted to the City for review and approval prior to construction.
- E. Where required, an encroachment permit is required prior to any work with the public right of way.
- F. Carter Acres Lane shall be open to traffic at all times. Adequate traffic control and safety measures shall be provided during construction.
- G. All debris and sediments shall be cleaned daily prior to leaving the job site. Loose materials shall be picked up. Paved surfaces shall be cleaned or washed. Safety hazards shall be removed immediately.

XII. Validity of Permit and Approval

- A. Planning Commission approval is subject to appeal to the City Council within ten calendar days of the approval.
- B. The use permit and design review application, Permit#12PLN-0002 approval shall expire one year from the date on which they became effective (unless extended under C below) unless a building permit is obtained and construction begun within the one year time period. The effective date of the use permit and design review application, Permit#12PLN-0002 and approvals is April 24, 2012.
- C. The applicant may apply to extend the expiration date, April 24, 2013, if an application with the required fee is filed at least 45 days before the said expiration date. (Otherwise the use permit and design review application, Permit#12PLN-0002 approval expires and are of no further force or effect and a new application for such permits is required.) A public hearing will be required for all extension applications, except those involving only Design

Review. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.

- D. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.
- E. The applicant (and successor in interest) shall properly maintain and ultimately remove, if required, the approved wireless telecommunication facilities in compliance with the provisions of the Standards and Criteria for Telecommunication Facilities and any conditions of permit approval. The applicant shall cover the costs of removal from the premises if it has been inoperative or abandoned for a two-year period, or upon expiration of the permit applications.
- F. **Verizon Wireless has agreed to provide the City with a RF Report: 30 days after construction, after any future potential major modifications to the site, and if requested by the City of Martinez (within 30 days of request). ~~Posting of a financial security may be required to pay for the cost of preparation of electromagnetic frequency radiation reports evaluating the conformance of approved and operative facilities with applicable standards adopted by the Federal Communications Commission, if complaints are received. The applicant may post a single financial security in an amount not to exceed \$25,000.00 to satisfy electromagnetic frequency radiation reports for build out of the applicant's network facilities plan.~~**
- G. The applicant, Verizon Wireless, shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the Planning Commission's decision to approve Permit#12PLN-0002 - Use Permit and Design Review application and any environmental document approved in connection therewith. The indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by Verizon Wireless, the City, and/or the parties initiating or bringing such action. The City shall promptly notify the applicant of any such claim, action or proceeding. The City shall retain the right to participate in any claim, action, or proceeding.
- H. Verizon Wireless shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if Verizon Wireless desires to

pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents.

- I. In the event that a claim, action or proceeding described in item G, above, is brought, the City shall promptly notify Verizon Wireless of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that Verizon Wireless is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with Verizon Wireless in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where Verizon Wireless have already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.
- J. Verizon Wireless shall indemnify the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
- K. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

F:\Community Development\All Projects\Wireless Facilities\Carter Acres Lane, 814 - Verizon\Verizon Wireless - PCCOA\_Final.doc



*Simone St. Clare*

May 4, 2012

To: Gary Hernandez  
City Clerk, City of Martinez  
525 Henrietta Street  
Martinez, Ca.

RE: Determination of Martinez Planning Commission on April 24, 2012 regarding proposed Verizon cell phone tower to be located at 814 Carter Acres Lane, Martinez, Ca.

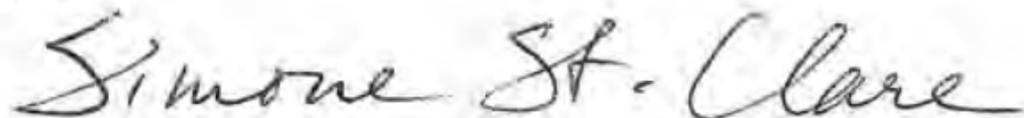
We are appealing the determination of the Martinez Planning Commission on or about April 24, 2012 to grant a permit to (applicant) Verizon Wireless/Ridge Communications, Inc. – Clarence Chavis for the installation of a new co-located wireless telecommunications facility on an existing PG&E tower located on a private residential lot. Our appeal is based on the following grounds:

1. The Notice of Public Hearing was deficient in that the agenda item was to potentially grant the application on the grounds that the permit was exempt from CEQA based upon an Existing Facilities exemption. However, the Planning Commission determined that the permit should be issued since the Federal Communications Act of 1996 pre-empted the City from acting. Neither the issue of preemption nor the Federal Communications Act of 1996 is mentioned anywhere in the Notice of Public Hearing. This is a violation of the letter and spirit of the statutory requirements for providing notice to the public of the items and actions to be taken by the Planning Commission.
2. The Federal Communications Act of 1996 does NOT preempt the City from considering the permit.
3. The permit is not exempt from CEQA.
4. The permit violates Martinez regulations and ordinances, especially given the subject property is located in an Environmental Conservation District.
5. The hearing of April 24, 2012 was improperly noticed. There are 13 lots within the Reliez Valley Homeowners Association where the private lot and the proposed cell antennae installation is located. Only 5 of the 13 lots were given notices of the hearing.

We request the decision of the Planning Commission on this matter be overturned and the application for permit be denied.

Thank you for your time and attention to this matter.

Signed:

A handwritten signature in black ink that reads "Simone St. Clare". The script is fluid and cursive, with the first letters of each word being capitalized and prominent.

Simone St. Clare

824 Carter Acres Lane Martinez

A handwritten signature in black ink that reads "Christine Scharmer". The script is cursive and somewhat stylized, with the first letters being large and capitalized.

Christine Scharmer

834 Carter Acres Lane, Martinez

Planning Commission  
Regular Meeting  
December 13, 2011  
Martinez, CA

**CALL TO ORDER**

Acting Chair, Commissioner Donna Allen called the meeting to order at 7:04 p.m.

Staff present: Senior Planner Corey Simon, Associate Planner Anjana Mepani

**ROLL CALL**

PRESENT: Donna Allen, Commissioner, Harriett Burt, Commissioner, Sigrid Waggener, Commissioner, Kimberley Glover, Commissioner, and James Blair, Commissioner (Alternate).

EXCUSED: Rachael Ford (Chair), Jeff Keller, Commissioner, and Paul Kelly, Commissioner.

ABSENT: None.

**AGENDA CHANGES**

Senior Planner Corey Simon noted that Commissioner Burt wanted to recuse herself from Item #3.

**PUBLIC COMMENT**

None.

**CONSENT ITEMS**

1. [Minutes of October 25, 2011, meeting.](#)

[October 25, 2011, minutes](#)

Associate Planner Anjana Mepani corrected the minutes regarding the vote on Consent Calendar, noting it should be a 7:0 vote, not 8:0; Commissioner Marchiano should not be listed as a member of the Commission, and Commissioner Glover is no longer the alternate.

On motion by Sigrid Waggener, Commissioner, seconded by Harriett Burt, Commissioner, to approve Minutes of October 25, 2011, meeting, as corrected. Motion unanimously passed 5 - 0. Yes: Commissioner Donna Allen, Commissioner Harriett Burt, Commissioner Sigrid Waggener, Commissioner Kimberley Glover, Commissioner James Blair (Alternate).

2. [Sale of Surplus Property - General Plan Consistency Find the sale of City owned Glendora Drive parcels \(APN #370-095-001 thru 005\), consistent with the General Plan.](#)

There were no members of the public comment wishing to speak regarding the sale.

Acting Chair Allen suggested doing a Certificate of Compliance, to clarify the existing easement and zoning restrictions, when the sale is completed. Mr. Simon said the easement will probably be removed since the owner of the upper parcel is interested in four of the lots, which will give him access. He agreed some memorialization of the easement and the restrictions on development or subdivision would be good for future reference.

Acting Chair Allen strongly reiterated the need for a Certificate of Compliance. Commissioner Burt agreed it would be helpful to specify the types of allowable uses.

On motion by Harriett Burt, Commissioner, seconded by Donna Allen, Commissioner, to approve Resolution finding the sale of City owned Glendora Drive parcels (APN #370-095-001 thru 005), consistent with the General Plan, and that the Planning Commission recommends a Certificate of Compliance be issued upon the sale of these parcels, to memorialize the zoning restrictions. Motion unanimously passed 5 - 0. Yes: Donna Allen, Commissioner Harriett Burt, Commissioner Sigrid Waggener, Commissioner Kimberley Glover, Commissioner, James Blair, Commissioner (Alternate).

3. [\*Acquisition and Sale of Property - General Plan Consistency Find that the City's purchase and pending sale of Contra Coast County owned parcel at 610 Court Street \(APN #373-265-001\), consistent with the General Plan.\*](#)

Commissioner Burt asked whether the finding of consistency needs to be made with the current General Plan or the one that is being developed. Mr. Simon said with the current one.

There was no public comment on the item. Commissioner Burt said she will abstain because of her membership in the Contra Costa County Historical Society and the remote possibility that it will be a party with the county for the building to be used for historical records.

On motion by James Blair, Commissioner (Alternate), seconded by Kimberley Glover, Commissioner, to approve a Resolution finding that the City's purchase and pending sale of Contra Costa County owned parcel at 610 Court Street (APN #373-265-001), is consistent with the General Plan. Motion unanimously passed 4 - 0. Yes: Sigrid Waggener, Commissioner Donna Allen, Commissioner Kimberley Glover, Commissioner, James Blair, Commissioner (Alternate), Abstain: Harriett Burt, Commissioner.

## **REGULAR ITEMS**

4. [\*Verizon Wireless 11PLN-0036 Study session to discuss and receive public input on a proposal for an installation of a new co-located wireless telecommunications facility on an existing PG&E tower located on a private residential lot. The proposed project consists of adding a 12' lattice structure, with 9 antennas, on top of the existing approximately 162' tall tower. Verizon will be leasing an approximately 473 sq. ft. area within the tower footprint for an equipment enclosure. The proposed project is located in a residential\*](#)

*zoning district, which requires a Use Permit and Design Review. This project is located on a PG&E Tower at 814 Carter Acres Lane (APN 365-150-053) Applicant: Chip Griffin, Ridge Communications (AM)*

Associate Planner Mepani presented the staff report, discussing the proposal, the need for a use permit and design review in the future, and the reason for the study session.

Applicant Clarence Chavis, Ridge Communications, noted that the new equipment will be under the footprint of the PG&E tower, and it will meet the same standards as in the past.

Acting Chair Allen opened public comment on the item.

CHRISTINE SCHARMER thanked the City for the noticing of the study session, but expressed concern that proper protocol was not followed. She noted that Carter Acres Lane is private lane and any action needs to be approved by the residents. She explained that one resident was strongly opposed to a previous request for one antenna, but the majority approved. She indicated she was not notified of the plan by the owner who has signed an agreement with Verizon, but she just happened to observe activity at the site. She was concerned about the impacts on property values, noting they have already been affected by the PG&E tower and lines; and there is debate about the health effects from cell phone towers. She read a petition from property owners opposed to the new proposed cell phone tower installation. She expressed regret that Verizon was not made aware of the private road limitations. She shared written handouts with the Commission.

SIMONE ST. CLARE also shared written information related to the Reliez Valley Homeowners Association and the requirement for agreement of the neighbors before changes can be made. She noted that the majority of the owners agreed it was not a good idea.

CHIP GRIFFIN noted that his residence on Alhambra Valley Road has very poor cell reception. He would like better coverage. He noted that he had served as the initial representative of Ridge Communications but no longer works for them. He also indicated that a neighborhood meeting was held at which Ms. St. Clare and Ms. Scharmer attended and gave input. He also referred to coverage maps included in the Commission packets showing coverage in area before/after installation of this tower. He noted that some studies have shown that property values actually increase when there is good cell coverage. Mr. Griffin said he thought the main issue was the PG&E tower, not the cell phone antenna itself.

Commissioner Burt asked when the neighborhood meeting was held. Ms. Mepani said July 6, 2011.

Ms. St. Clare said yes, an informational meeting was held, but there was no information given regarding contracts that had been signed.

Ms. Scharmer acknowledged yes, better cell service might raise property values, unless in view of tower or close proximity.

Seeing no further speakers, Acting Chair Allen closed public comment on the item.

Rebuttal:

Mr. Chavis said there has been coordination and communication with the property owner regarding the project, and funds to upgrade the road.

Commissioner Waggener asked for staff input regarding the use of and access to Carter Acres Lane. Ms. Mevani said it is Verizon's responsibility to research access and easements. Acting Chair Allen noted it would be very important to get that information before the use permit/design review applications are submitted/processed.

Commissioner Blair said it was not the Planning Commission's responsibility to make that decision; rather, that is an issue between Verizon and the affected homeowners. Ms. St. Clare questioned whether the Planning Commission has the responsibility to review issues that run with land. Mr. Blair said not in this case, since it is a private road.

Acting Chair Allen said hopefully staff is fully aware of this issue and it will be resolved before the application comes back. Commissioner Waggener agreed.

Commissioner Burt said she would not be able to vote in support of the tower in the future unless those issues are resolved first. She expressed concern that the property owner was not in attendance to make a statement, etc.

Acting Chair Allen acknowledged there is an issue with cell phone service in the valley, and she was appreciative of co-locating on PG&E towers rather than adding new structures.

Commissioner Glover encouraged both sides to meet together to resolve things before the application comes back to the Commission.

Commissioner Burt discussed her role with the California Public Utilities Commission prior to her retirement in 2005 and her subsequent one-year restriction on voting on these applications. She acknowledged that the location of cell phone towers is one of the most difficult issues, and that there is no clear information available regarding public health impacts. She also commented on concerns with PG&E towers but they are necessary since we all use electricity. She was grateful for co-location possibilities now rather than adding new structures. She noted there is wide use of smart phones and devices, which has created the need for reliable coverage.

Commissioner Burt expressed a strong desire for Verizon to research the neighborhood issues and are fully dealt with, and for a Verizon representative to attend the next hearing for the application.

Acting Chair Allen said it would be good to have a greater discussion of the co-location possibilities. Commissioner Blair said that might be part of the neighbors' issues. The Commissioners present all seemed to agree that neighborhood issues need to be resolved before

the application proceeds further.

Mr. Chavis said it does seem obvious that road ownership and issues should be addressed.

Ms. Mepani asked whether the Commission would support the application in concept. The Commission said they could not answer until the access issues are settled.

Commissioner Burt asked about other alternative sites and asked Verizon to look again. Staff said it was included in the report. Commissioner Burt encouraged Verizon and Ridge Communications to keep their options open.

Mr. Griffin asked for clarification on the next steps in the process, which staff explained.

### COMMISSION ITEMS

Acting Chair Allen asked if the Muir Station Road EIR is available. Mr. Simon discussed the status of the Initial Study status and noted the project is tentatively scheduled to be on the agenda for the Planning Commission meeting in late January. He indicated copies of the EIR and Initial Study should be out before the staff report for that meeting.

### STAFF ITEMS

Mr. Simon announced the next General Plan Task Force meeting.

Commissioner Burt asked if there will be a meeting in the early part of January. Staff confirmed it was unlikely.

### COMMUNICATIONS

Acting Chair Allen adjourned the meeting at 8:03 p.m., to the next regularly scheduled meeting at 7:00 p.m. on January 10, 2012, in the City Council Chambers.

Respectfully Submitted,

Approved by the Planning Commission  
Chairperson

Transcribed by Mary Hougey

Rachael Ford

Lindsey Hansen  
Direct: 310.956.3412

McGUIREWOODS

lrhansen@mcguirewoods.com  
Direct Fax: 310.956.3185  
File #1580036-1322

December 20, 2011

**VIA OVERNITE EXPRESS**

Anjana Mepani  
Associate Planner  
City of Martinez  
525 Henrietta Street  
Martinez, CA 94553



**RE: Use of Carter Acres Lane by GTE Mobilnet of California Limited Partnership, dba Verizon Wireless ("Verizon Wireless") in connection with Land Lease Agreement dated July 13, 2011 (the "Lease") between Verizon Wireless and Michael H. Hansen and Norma Hansen, as Trustees of the Hansen Family Trust, under Declaration of Trust dated \_\_\_, 2002, for the benefit of Michael H. Hansen and Norma Hansen (collectively, "Landlord")**  
**Our Client: Verizon Wireless**

Dear Ms. Mepani,

Pursuant to the Lease, Verizon Wireless has leased from Landlord a portion of the property (the "Premises") located at 814 Carter Acres Lane, Martinez, California (the "Property") for the construction, operation and maintenance of a communications facility. Landlord is the owner of the Property. Under the Lease, Verizon Wireless has the right to access the Premises via Carter Acres Lane. Landlord has the right to grant Verizon Wireless such access rights over Carter Acres Lane because Landlord is the owner of a non-exclusive easement for access and utility purposes encompassing Carter Acres Lane. The location of the easement is shown on the enclosed survey prepared by Foresight Land Surveying & Engineering dated August 30, 2011. This easement is appurtenant to the Property and is shown as Parcel Two in the legal description of the Property on the enclosed North American Title Company preliminary title report dated January 13, 2011. Therefore, Verizon Wireless' right to use Carter Acres Lane for access to the Premises derives from Landlord's easement interest in it.

Verizon Wireless has agreed under the Lease to make a one-time payment to the Carter Acres Community Road Fund in the amount of Thirty Thousand Dollars (\$30,000.00) for future improvements to be made to Carter Acres Lane. Verizon Wireless will pay such amount to the

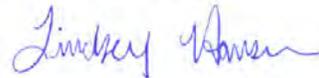
December 20, 2011

Page 2

Carter Acres Community Road Fund within forty-five (45) days after the commencement date of the Lease.

Verizon Wireless does not believe that any additional approvals are necessary for its use of Carter Acres Lane. Please feel free to contact me if you need any further information or would like to discuss this issue.

Very truly yours,



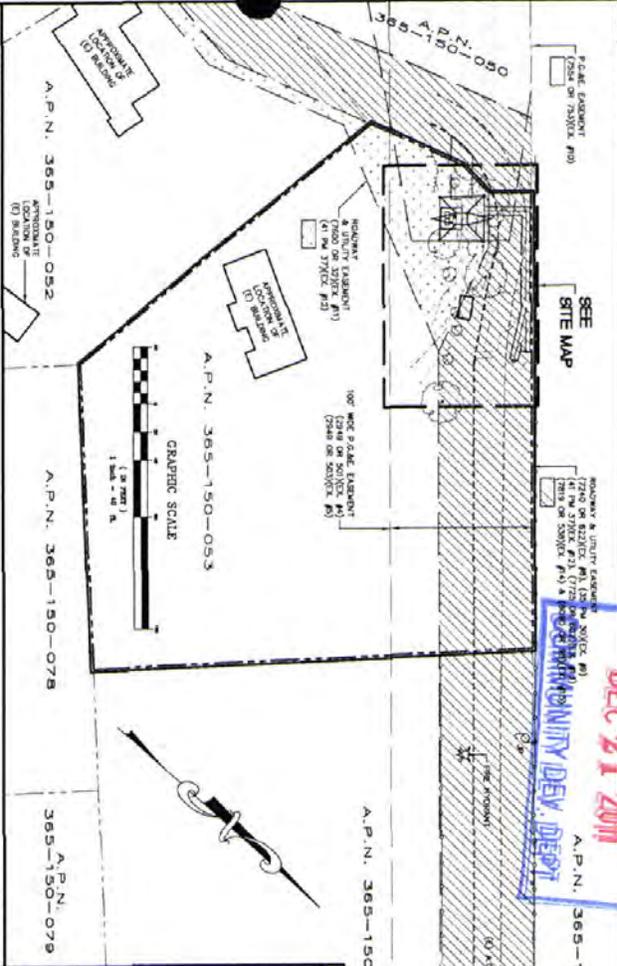
Lindsey R. Hansen, Esq.

Enclosures

cc: Peter Maushardt (via e-mail w/o encls.)  
Shannon Collins (via e-mail w/o encls.)  
John McGaughey (via e-mail w/o encls.)  
Lisa A. Atty, Esq. (w/o encls.)



OVERALL SITE MAP



RECEIVED

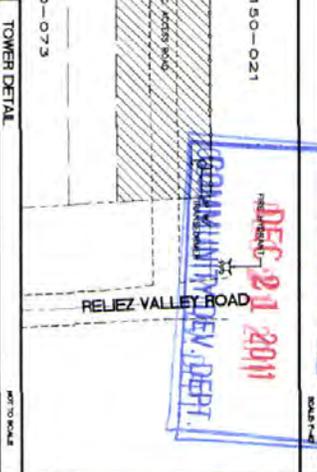
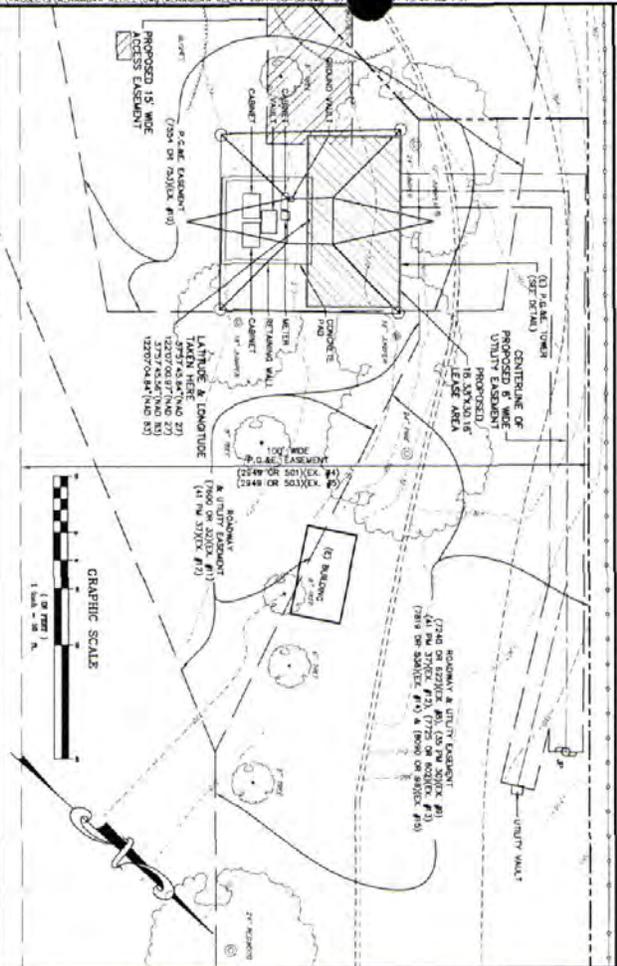
DEC 21 2011

COMMUNITY DEV. DEPT.

RECEIVED

DEC 21 2011

COMMUNITY DEV. DEPT.



**GENERAL NOTES**

**PROPERTY INFORMATION**

**LESSOR'S LEGAL DESCRIPTION**

**TITLE REPORT**

**BASIS OF BEARING**

**BENCH MARK**

**UTILITY NOTES**

**LEGEND**

**248124**  
**ALHAMBRA RELIEZ**  
 814 CARTER AVENUE  
 MARTINEZ, CA 94553

**DATE: 08/20/11**

**SHEET NO. C-1**

NO.	DATE	DESCRIPTION
1	04/08/11	ISSUED FOR REVIEW
2	05/11/11	REV. #1 PER EMAIL
3	06/17/11	REV. #2 PER EMAIL
4	08/30/11	REV. #3 PER EMAIL

**REVISIONS**

**PROPERTY INFORMATION**

**LESSOR'S LEGAL DESCRIPTION**

**TITLE REPORT**

**BASIS OF BEARING**

**BENCH MARK**

**UTILITY NOTES**

**LEGEND**

**248124**  
**ALHAMBRA RELIEZ**  
 814 CARTER AVENUE  
 MARTINEZ, CA 94553

**DATE: 08/20/11**

**SHEET NO. C-1**



4255 Hopyard Road, Suite 1  
Pleasanton, CA 94588  
(925)847-9570  
(925)847-0663

Linda Bambach  
Ridge Communications, Inc.  
12667 Alcosta Blvd., Suite 175  
San Ramon, CA 94583  
Phone: (925)498-2340  
Fax: (925)498-2341



Customer Reference: Alhambra Reliez\_248124\_PO#21575

**DIRECT ALL INQUIRIES TO:**

Title Officer: Chan Amarsingh  
Phone: (925)399-3000  
Fax No.: (925)251-0104  
E-Mail: camarsingh@nat.com

**Property:** 814 CARTER ACRES LANE  
MARTINEZ, CA 94553  
**Owner:** Michael H. Hansen and Norma Hansen

**PRELIMINARY REPORT**

IN RESPONSE TO THE ABOVE REFERENCED APPLICATION FOR A POLICY OF TITLE INSURANCE,

**North American Title Insurance Company**

Hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and limitations on covered risks of said Policy or Policies are set forth in Exhibit A attached. The Policy to be issued may contain an Arbitration Clause. When the amount of insurance is less than that set forth in the Arbitration Clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the Parties. Limitations on covered risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a deductible amount and a maximum dollar limit of liability for certain coverages are also set forth in Exhibit A. Copies of the Policy forms should be read. They are available from the office which issued this report.

**Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.**

**It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.**

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of January 13, 2011 at 7:30 A.M.

Chan Amarsingh, Title Officer

A specific request should be made if another form or additional coverage is desired.

The form of Policy of title insurance contemplated by this report is:

PRELIMINARY REPORT ONLY

Title to said estate or interest at the date hereof is vested in:

MICHAEL H. HANSEN AND NORMA HANSEN, AS TRUSTEES OF THE HANSEN FAMILY TRUST,  
UNDER DECLARATION OF TRUST DATED FEBRUARY \_\_, 2002, FOR THE BENEFIT OF MICHAEL  
H. HANSEN AND NORMA HANSEN



The estate or interest in the land hereinafter described or referred to covered by this Report is:

A fee as to Parcel(s) ONE, an easement as to Parcel(s) TWO.

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2011-2012, a lien not yet due or payable.
2. General and special taxes for the fiscal year **2010-2011**,

First installment:	<b>\$1,889.11, PAID</b>
Penalty:	<b>\$188.91</b>
Second installment:	<b>\$1,889.11, OPEN</b>
Penalty:	<b>\$208.91</b>
Code area:	<b>05-032</b>
A. P. No.:	<b>365-150-053-4</b>
Exemption:	<b>\$7,000.00</b>
Land:	<b>\$75,195.00</b>
Improvement:	<b>\$257,247.00</b>
Total Amount:	<b>\$3,778.22</b>
3. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
4. An easement to ERECT, CONSTRUCT, RECONSTRUCT, AND MAINTAIN A LINE OF TOWERS, WITH SUCH WIRES AND CABLES, FOR ELECTRICAL ENERGY AND COMMUNICATION and incidental purposes, recorded MARCH 19, 1957 as BOOK 2949, PAGE 501 of Official Records.

In Favor of:	PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION
Affects:	A STRIP OF LAND 100 FEET IN WIDTH WITHIN THE NORTHWESTERLY PORTION OF SAID LAND

5. An easement to ERECT, CONSTRUCT, RECONSTRUCT, AND MAINTAIN A LINE OF TOWERS, WITH SUCH WIRES AND CABLES, FOR ELECTRICAL ENERGY AND COMMUNICATION and incidental purposes, recorded MARCH 19, 1957 as BOOK 2949, PAGE 503 of Official Records.

In Favor of: PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION

Affects: A STRIP OF LAND 100 FEET IN WIDTH WITHIN THE NORTHWESTERLY PORTION OF SAID LAND



6. Covenants, conditions, restrictions and easements in the document recorded SEPTEMBER 21, 1972 as BOOK 6756, PAGE 528 of Official Records, but deleting any covenant, condition, or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, sexual orientation, marital status, ancestry, disability, handicap, familial status, national origin or source of income (as defined in California Government Code §12955(p)), to the extent such covenants, conditions or restrictions violate 42 U.S.C. §3604(c) or California Government Code §12955. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

7. RIGHTS OF THE OWNERS OF THE PARCELS OF LAND SHOWN ON THAT CERTAIN PARCEL MAP MS 72-7 FILED SEPTEMBER 28, 1972 IN BOOK 24 OF PARCEL MAPS, AT PAGE 32, IN AND TO THAT PORTION OF THE HEREIN DESCRIBED PROPERTY LYING WITHIN THE AREA DESIGNATED AS "COMMON AREA" ON SAID PARCEL MAP (24 PM 32).

8. An easement for ROADWAY AND UTILITY and incidental purposes, recorded JUNE 3, 1974 as BOOK 7240, PAGE 622 of Official Records.

In Favor of: JOHN E. DEVITO, ET UX

Affects: THE NORTHWESTERLY PORTION OF SAID PROPERTY

Terms and provisions contained in the above document.

9. An easement shown or dedicated on the map filed or recorded OCTOBER 1, 1974 as BOOK 35, PAGE 30 of PARCEL MAPS

For: ACCESS AND UTILITY PURPOSES and incidental purposes.

10. An easement to ERECT, CONSTRUCT, RECONSTRUCT AND MAINTAIN (2) INDEPENDENT LINES OF POLES AND WIRES and incidental purposes, recorded JULY 1, 1975 as BOOK 7554, PAGE 753 of Official Records.

In Favor of: PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION

Affects: THE NORTHWESTERLY PORTION OF SAID PROPERTY

11. An easement for ROADWAY AND UTILITY and incidental purposes, recorded AUGUST 22, 1975 as SERIES NO. 76629 IN BOOK 7600, PAGE 32 of Official Records.

In Favor of: JOHN E. DEVITO

Affects: THE WESTERLY PORTION OF SAID PROPERTY

12. An easement shown or dedicated on the Map as referred to in the legal description

For: ACCESS AND UTILITY and incidental purposes.

13. An easement for ROADWAY AND UTILITY and incidental purposes, recorded DECEMBER 30, 1975 as SERIES NO. 125690 IN BOOK 7725, PAGE 802 of Official Records.  
In Favor of: STEFFEN NYBANK  
Affects: THAT PORTION OF SAID PROPERTY LYING WITHIN THE STRIP OF LAND DESIGNATED AS "ACCESS & UTILITY EASEMENT" ON THE PARCEL MAP REFERRED TO HEREIN (41 PM 37)



14. An easement for ROADWAY AND UTILITY and incidental purposes, recorded APRIL 9, 1976 as SERIES NO. 36995 IN BOOK 7819, PAGE 538 of Official Records.  
In Favor of: JOHN L. BUELL  
Affects: THE WESTERLY AND NORTHWESTERLY PORTION OF SAID LAND

15. An easement for ROADWAY AND UTILITY and incidental purposes, recorded NOVEMBER 15, 1976 as BOOK 8090, PAGE 98 of Official Records.  
In Favor of: MICHAEL NYBANK. A SINGLE MAN  
Affects: THAT PORTION OF SAID PROPERTY LYING WITHIN THE STRIP OF LAND DESIGNATED AS ACCESS & UTILITY EASEMENT ON THE PARCEL MAP REFERRED TO HEREIN (41 PM 37)

16. A Deed of Trust to secure an original indebtedness of \$500,000.00 recorded APRIL 16, 2004 as INSTRUMENT NO. 2004-0135909-00 of Official Records.  
Dated: MARCH 24, 2004  
Trustor: MICHAEL H. HANSEN AND NORMA HANSEN, AS TRUSTEES OF THE HANSEN FAMILY TRUST, UNDER DECLARATION OF TRUST DATED FEBRUARY 2002  
Trustee: AMERICAN SECURITIES COMPANY  
Beneficiary: WELLS FARGO BANK, N.A.

17. With respect to the trust referred to in the vesting:  
a. A certification pursuant to Section 18100.5 of the California Probate Code in a form satisfactory to the Company.  
b. Copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction.  
c. Other requirements which the Company may impose following its review of the material required herein and other information which the Company may require.

**LEGAL DESCRIPTION**



Real property in the City of MARTINEZ, County of CONTRA COSTA, State of CALIFORNIA,  
described as follows:

**PARCEL ONE:**

PARCEL "B", AS SHOWN ON THE PARCEL MAP, FILED DECEMBER 22, 1975 IN BOOK 41 OF  
PARCEL MAPS, PAGE 37, CONTRA COSTA COUNTY RECORDS.

**PARCEL TWO:**

A NON-EXCLUSIVE RIGHT OF WAY AS AN APPURTENANCE TO PARCEL ONE ABOVE FOR USE AS  
A ROADWAY FOR VEHICLES OF ALL KINDS, PEDESTRIANS, AND ANIMALS, FOR WATER, GAS,  
OIL AND SEWER PIPE LINES AND FOR TELEPHONE, ELECTRIC LIGHT AND POWER LINES,  
TOGETHER WITH THE NECESSARY POLES OR CONDUITS TO CARRY SAID LINES OVER, UNDER  
AND UPON THAT PORTION OF THE PARCEL MAP FILED OCTOBER 1, 1974 IN BOOK 35 OF  
PARCEL MAPS AT PAGE 30 IN THE OFFICE OF THE CONTRA COSTA COUNTY RECORDER  
DESIGNATED AS "ACCESS AND UTILITY EASEMENT".

APN: 365-150-053-4

INFORMATIONAL NOTES

RECEIVED  
DEC 21 2011  
COMMUNITY DEV. DEPT.

1. GOOD FUNDS LAW

Under Section 12413.1 of the California Insurance Code, North American Title Company, Inc. may only make funds available for disbursement in accordance with the following rules:

Same day availability. Disbursement on the date of deposit is allowed only when funds are deposited to North American Title Company, Inc. by Cash or Electronic Transfer (Wire). Cash will be accepted only under special circumstances and upon approval by management.

Next business day availability. If funds are deposited to North American Title Company, Inc. by cashier's checks, certified checks or teller's checks, disbursement may be on the next business day following deposit. A "teller's check" is one drawn by an insured financial institution against another insured financial institution (e.g., a savings and loan funding with a check drawn against a FDIC insured bank).

Second business day availability. If the deposit is made by checks other than those described in paragraphs 1 and 2 above, disbursement may occur on the day when funds must be made available to depositors under Federal Reserve Regulation CC. In most cases, these checks will be available on the second business day following deposit. (For further details, consult California Insurance Code Section 12413, et seq. and Regulation CC).

These are the minimum periods before funds will be made available. North American Title Company, Inc. is not obligated to disburse funds at the expiration of the time periods above, and expressly reserves the right to require additional time before disbursing on deposited funds. Close of escrow and final disbursement will not be made based on deposits in the form of personal checks, corporate checks, credit union checks, money market checks, travelers checks and official checks until confirmation of final clearance of the funds.

North American Title Company will not be responsible for accruals of interest or other charges resulting from compliance with the disbursement restrictions imposed by state law.

For Your Information, Our Wire Instructions Are:

**Wire To:**

Comerica Bank  
2321 Rosecrans Ave, Ste 5000  
El Segundo, CA 90245

Routing No.: 121137522

**Credit the Account of:**

North American Title Company  
Bank Account No.: 1893546067  
Escrow No. 54606-1063073-11

Branch/County No.: 5

Attn:

- **ACH FUNDS** - Automatic Clearing House  
North American Title Company will not accept funds in the form of ACH transfers.

2. According to the public records, there has been no conveyance of the land within a period of twenty-four months prior to the date of this report, except as follows:

None

3. Basic rate applies.

4. The map attached, if any, may or may not be a survey of the land depicted hereon. North American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.
5. North American Title Company, Inc.'s charges for recording the transaction documents include charges for services performed by North American Title Company, Inc., in addition to an estimate of payments to be made to governmental agencies.



RECEIVED

DEC 21 2011

COMMUNITY DEV. DEPT.

Exhibit A (Revised 02-05-10)

CALIFORNIA LAND TITLE ASSOCIATION  
STANDARD COVERAGE POLICY —1990

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE- SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.  
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10/22/03)  
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. Land use
  - d. improvements on the Land
  - e. Land division
  - f. environmental protectionThis Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.  
This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 14:	1% of Policy Amount or \$2,500 (whichever is less)	\$10,000
Covered Risk 15	1% of Policy Amount or \$5,000 (whichever is less)	\$10,000
Covered Risk 16:	1% of Policy Amount or \$5,000 (whichever is less)	\$25,000
Covered Risk 18	1% of Policy Amount or \$2,500 (whichever is less)	\$5,000



**CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (01/01/08)  
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE**

**EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

- Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - building;
  - zoning;
  - land use;
  - improvements on the Land;
  - land division; and
  - environmental protection.

This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.

- The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
- The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
- Risks:
  - that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
  - that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
  - that result in no loss to You; or
  - that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
- Failure to pay value for Your Title.
- Lack of a right:
  - to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.

**LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$10,000
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$10,000
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 21	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$5,000

**AMERICAN LAND TITLE ASSOCIATION  
RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)**

**EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

- Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- \* land use
- \* improvements on the land
- \* land division
- \* environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
  - \* a notice of exercising the right appears in the public records
  - \* on the Policy Date
  - \* the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
  - \* that are created, allowed, or agreed to by you
  - \* that are known to you, but not to us, on the Policy Date-- unless they appeared in the public records
  - \* that result in no loss to you
  - \* that first affect your title after the Policy Date --this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
  - \* to any land outside the area specifically described and referred to in Item 3 of Schedule A

OR

  - \* in streets, alleys, or waterways that touch your land

This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.



**ALTA LOAN POLICY (10-17-92)  
WITH ALTA ENDORSEMENT-FORM 1 COVERAGE**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgement or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.  
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

2006 ALTA LOAN POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

RECEIVED  
DEC 21 2011  
COMMUNITY DEV. DEPT.

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.  
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

ALTA OWNER'S POLICY (10-17-92)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

- (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
- (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
  - (a) to timely record the instrument of transfer; or
  - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage Policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.  
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

**2006 ALTA OWNER'S POLICY (06-17-06)**

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and that are not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.



**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:
  - (a) The time of the advance; or
  - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

**ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (01-01-08)  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorney's fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.



## GOOD FUNDS LAW

CALIFORNIA ASSEMBLY BILL 512 ("AB512") IS EFFECTIVE ON JANUARY 1, 1990. UNDER AB512, NORTH AMERICAN TITLE COMPANY, INC. ("NORTH AMERICAN TITLE COMPANY, INC.") MAY ONLY MAKE FUNDS AVAILABLE FOR MONETARY DISPERSAL IN ACCORDANCE WITH THE FOLLOWING RULES:

- \* **SAME DAY AVAILABILITY** - DISBURSEMENT ON THE DATE OF DEPOSIT IS ALLOWED ONLY WHEN FUNDS ARE DEPOSITED TO NORTH AMERICAN TITLE COMPANY ("NORTH AMERICAN TITLE COMPANY, INC.") IN **CASH** OR BY ELECTRONIC TRANSFER (WIRE). BEAR IN MIND THAT CASH WILL BE ACCEPTED FROM CUSTOMERS ONLY UNDER SPECIAL CIRCUMSTANCES AS INDIVIDUALLY APPROVED BY MANAGEMENT.
- \* **NEXT DAY AVAILABILITY** - IF FUNDS ARE DEPOSITED TO NORTH AMERICAN TITLE COMPANY, INC. BY CASHIER'S CHECKS, CERTIFIED CHECKS, OR TELLER'S CHECKS, DISBURSEMENT MAY BE ON THE NEXT BUSINESS DAY FOLLOWING DEPOSIT. A "TELLER'S CHECK" IS ONE DRAWN BY AN INSURED FINANCIAL INSTITUTION AGAINST ANOTHER INSURED FINANCIAL INSTITUTION (E.G., A SAVINGS AND LOAN FUNDING WITH A CHECK AGAINST A FDIC INSURED BANK).
- \* **2-5 DAY AVAILABILITY (REGULATION CC)**. IF THE DEPOSIT IS MADE BY CHECKS OTHER THAN THOSE DESCRIBED IN PARAGRAPHS 1 AND 2 ABOVE, DISBURSEMENT MAY OCCUR ON THE DAY WHEN FUNDS MUST BE MADE AVAILABLE TO DEPOSITORS UNDER FEDERAL RESERVE REGULATION CC. THIS REQUIRES A "HOLD" ON SOME CHECKS OF 2-5 DAYS OR LONGER IN SOME INSTANCES. PERSONAL CHECKS, DRAFTS, PRIVATE CORPORATION AND COMPANY CHECKS, AND FUNDING CHECKS FROM MORTGAGE COMPANIES THAT ARE NOT TELLER'S CHECKS ARE AMONG THOSE CHECKS SUBJECT TO SUCH HOLDS. (FOR FURTHER DETAILS, CONSULT CHAPTER 598, STATUTES OF 1989.)

NOTE: THE ABOVE GUIDELINES ARE IN CONFORMITY WITH THOSE ISSUED BY THE DEPARTMENT OF INSURANCE FOR ALL CALIFORNIA TITLE INSURANCE AND CALIFORNIA TITLE COMPANIES.

### PRELIMINARY CHANGE OF OWNERSHIP REPORT

NOTE: ON OR AFTER JULY 1, 1985, THE COUNTY RECORDER'S OFFICE WILL CHARGE, IN ADDITION TO THE REGULAR CHARGES, AN EXTRA \$20.00 RECORDING FEE, UNLESS A DOCUMENT EVIDENCING A CHANGE OF OWNERSHIP IS ACCOMPANIED BY A PRELIMINARY CHANGE OF OWNERSHIP REPORT. IN LIEU OF SAID REPORT, SIGNED BY THE TRANSFEREE, THE RECORDER WILL ACCEPT AN AFFIDAVIT THAT THE TRANSFEREE IS NOT A RESIDENT OF CALIFORNIA. TITLE BILLINGS WILL BE ADJUSTED TO REFLECT SUCH ADDITIONAL FEES WHEN APPLICABLE.

### IRS FORM 1099

BEFORE THE TRANSACTION CONTEMPLATED BY THIS REPORT CAN BE CLOSED, THE SELLER/BORROWER MUST FURNISH A TAXPAYER IDENTIFICATION NUMBER TO US SO THAT WE CAN FILE AN IRS FORM 1099, OR ITS EQUIVALENT, WITH THE INTERNAL REVENUE SERVICE. THIS PROCEDURE IS REQUIRED BY SECTION 6045 OF THE INTERNAL REVENUE SERVICE.

### NOTICE OF A WITHHOLDING REQUIREMENT

**State Withholding & Reporting for closings after January 1, 2003:** Under California Law (Rev & Tax Code 18662) a buyer may be required to withhold and deliver to the Franchise Tax Board (FTB) an amount equal to 3.33% of the sales price in the case of disposition of California real property interest ("Real Property") by either: 1) a seller who is an individual or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of seller, or 2) a corporate seller that has no permanent place of business in California. Buyer may be subject to a penalty (equal to the greater of 10% of the amount required to be withheld or \$500) for failing to withhold and transmit the funds to FTB in the time required by law. Buyer is not required to withhold any amount and will not be subject to penalty for failure to withhold if: a) the sale price of the Real Property does not exceed \$100,000; b) the seller executes a written certificate under penalty of perjury certifying that the seller is a corporation with a permanent place of business in California; or c) the seller, who is an individual, executes a written certificate under penalty of perjury certifying one of the following: (i) the Real Property was the seller's principal residence (as defined in IRC 121); (ii) the Real property was last used as seller's principal residence without regard to time period; (iii) the Real Property is or will be exchanged for property of like kind (as defined in IRC 1031) and that the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under IRC 1031; (iv) the Real Property has been compulsorily or involuntarily converted (as defined in IRC 1033) and the seller intends to acquire property similar or related in service or use as to be eligible for nonrecognition of gain for California income tax purposes under IRC 1033; or (v) the Real Property sale will result in loss of California income tax purposes. Seller is subject to penalties for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding laws. FTB may grant reduced withholding and waivers from withholding on a case-by-case basis for corporations or other entities.

For additional information regarding California withholding, contact the Franchise Tax Board at (toll free) 888-792-4900, or by e-mail at [urws@ftb.ca.gov](mailto:urws@ftb.ca.gov) or visit their website at [www.ftb.ca.gov](http://www.ftb.ca.gov).



## NATCO NOTES:

**DON'T DELAY YOUR CLOSE OF ESCROW! IF ANY OF THE FOLLOWING ITEMS AFFECT YOUR TRANSACTION, PLEASE NOTIFY YOUR ESCROW OFFICER AS SOON AS POSSIBLE.**

### **I. Ongoing Construction**

The Title Company will require, as a minimum, the following prior to insuring:

- A. Valid Notice of Completion verified by inspection and expiration of 60 days from recordation of said notice or;
- B. Approved Indemnities from Borrower/Seller, approved financial statement not over one year old and a waiver of lien rights from the general contractor.
- C. The Title Company may also require proof of payment of subcontractors, indemnity and financial statement from the general contractor, a copy of the contract and the with-holding of a sum of money, to cover the contract until the mechanics lien period has expired, with which to pay filed mechanics liens, or other assurances to be determined on a case by case basis.

### **II. Bankruptcy**

The Title Company will require, as a minimum, the following prior to insuring:

- A. The bankruptcy case be closed or,
- B. An order from the bankruptcy court verifying the transaction, with a demand placed into escrow by the trustee.
- C. Escrow may not close until 15 days have elapsed from the order and the file has been checked to verify that there are no objections to said order.

### **III. Abstracts of Judgment, Liens, Tax Liens**

The Title Company will require, as a minimum, the following prior to insuring:

- A. Proof that the buyer/seller is not the same party as on the recorded liens.
- B. This is accomplished by the buyer/seller/borrower completely filling out and signing a statement of information.
- C. The items are to be paid off in escrow.
- D. The items are to be subordinated to the new transaction.

### **IV. Community Property**

California is a community property state:

- A. A quitclaim from one spouse to another must specifically quitclaim any community property interest.
- B. An interlocutory decree of divorce specifically granting the property to one spouse is sufficient if a final decree is issued and recorded in the county.

### **DID YOU KNOW?**

Any of the following situations could cause a substantial delay in close of escrow. The earlier we are made aware of potential problems, the earlier the issues can be dealt with to ensure a smooth and timely close of your transaction.

- Are your principals trying to accomplish a tax deferred exchange? If so, have they chosen an intermediary and who is it?
- Will any of the principals be using a Power of Attorney?
- Are any of the vested owners deceased or in any way incapacitated?
- Do all of the principals who will be signing have a current photo I.D. or Driver's License?
- Are the sellers of this transaction residents of California?
- Has there been a change in marital status of any of the vested owners or will we be adding anyone to title, i.e. co-signers, additional insured, etc.?
- Is the property currently vested in a trust or will the new buyer/borrower vest in a trust?
- Are any of the trustees of the trust deceased or incapacitated?
- Will this transaction involve a short sale?
- Will there be a new entity formed, i.e. partnership, corporation?
- Will all of the principals be available to sign or will we be Federal Expressing documents to another state/country? If so, where?

If you have any other information which may be useful to us, please contact your escrow officer as soon as possible. Our goal is to make your transaction as easy and trouble-free as possible. We appreciate your business and hope that you find North American Title Company your company of choice for all of your title and escrow needs.



**NOTICE OF OPPORTUNITY TO EARN INTEREST DEPOSIT INSTRUCTIONS/AUTHORIZATIONS**

North American Title Company, Inc. ("North American") believes that it is in the best interest of our customers to provide to each depositing party notice of an opportunity to earn interest on all deposited funds through a special account at one of North American's depository banks.

North American has received or will be receiving funds deposited by you or your lender to be used on your behalf with regard to a transaction involving real estate in the State of California. It is important that North American have the appropriate instructions/authorizations for the handling of these deposited funds.

**PLEASE READ THE FOLLOWING CAREFULLY:**

1. You have the opportunity to earn interest on the funds you deposit with us through a special account arrangement North American has established with one of its depository banks. The current interest rate for these accounts will fluctuate periodically with market conditions and may change prior to or during the time your account is open. No such opportunity to earn interest on the funds deposited by a lender is available, except as described below.

2. If you elect to earn interest through this special account arrangement, North American will charge you **an additional fee of \$45.00** for the establishment and maintenance of the account. This fee compensates North American for the costs associated with opening the interest bearing account, preparing correspondence/documentation, transferring funds, maintaining appropriate records for audit/reconciliation purposes and filing of any required tax withholding statements. **It is important that you consider this cost in your decision because the cost may exceed the interest you earn.**

**Example:** A regular savings deposit of \$1,000.00 at an average interest rate of 3.0%\* per annum for a 30-day period:

<b>Deposit</b>	<b>x</b>	<b>Rate</b>	<b>÷</b>	<b>Annual</b>	<b>x</b>	<b>Days</b>	<b>=</b>	<b>Total Interest Earned</b>
\$1,000.00	x	.03	÷	360	x	30	=	\$2.50

\*Please note that this interest rate is only an example and North American does not guaranty the availability of any specific rate.

3. If you elect to earn interest but would like to have your funds invested in another bank and/or another type of interest-bearing account, please contact your North American office. The additional fee for these types of accounts will vary, but will be **significantly greater than \$45.00.**

4. **If you choose not to have your funds deposited in an interest-bearing account,** you do not need to sign or return this form, but your funds will be held in a North American general escrow trust account. A general escrow trust account is restricted and protected against claims by third parties or creditors of North American. North American will receive certain financial benefits from the depository institution as a result of maintaining the general escrow trust account. Some or all of these benefits may be considered interest due you under California Insurance Code §12413.5. You may segregate your funds in a separate interest-bearing account and receive the benefits therefrom, but will be required to pay North American an additional fee for this service (as described in paragraphs 2 and 3 above). **Alternatively, you may leave your funds in the general escrow trust account and authorize North American to keep the benefits it receives from the depository bank.**

5. **If you elect to have your funds earn interest in an interest-bearing account** using North American's depository bank, you **MUST** sign and return to North American this form and a W-9 form that you can request from your North American representative. Please be advised that you will be responsible for reporting all earnings to the applicable taxing authorities. Also, North American cannot deposit the funds in the specified account until good funds have been received into North American's general escrow account and all the properly completed forms have been returned to North American. Unless and until North American receives all the required forms, North American will not establish such account and all funds will remain on deposit in North American's general escrow account.

Unless you specify in writing that the interest-bearing account be established at a specific financial institution, North American will open the interest-bearing account with a federally or state chartered financial institution of its choosing.

**ELECTION TO EARN INTEREST:**

**I HEREBY AUTHORIZE AND DIRECT NORTH AMERICAN TO OPEN AN INTEREST-BEARING ACCOUNT AT NORTH AMERICAN'S DEPOSITORY BANK AND TO CHARGE THE ADDITIONAL FEE FOR THIS SERVICE.**

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

6. Funds deposited by a lender are ordinarily deposited to escrow one to two days prior to closing. You should be aware that your lender may begin charging interest on your loan from the date loan funds are deposited into North American's escrow trust account. Should the loan funds, if any, deposited by your lender remain on deposit in the escrow trust account for a period of more than 5 business days from the date of deposit to and including the date of closing of the transaction, North American agrees that it will credit you an interest equivalent based on the amount of loan funds deposited, the period of time prior to closing that those funds remained in the escrow trust



## Privacy Policy Notice

We at the North American Title Group family of companies take your privacy very seriously. This Notice is being given on behalf of each of the companies listed below<sup>1</sup> (the "North American Title Companies"), as well as on behalf of North American Advantage Insurance Services, LLC. It explains our policy regarding the personal information of our customers and our former customers.

### OUR PRIVACY POLICIES AND PRACTICES

#### The North American Title Companies

1. **Information North American Title Companies collect, and the sources from which we collect it:** On forms related to your real estate transaction, North American Title Companies collect personal information that you, our affiliates or third parties have provided to us, such as, for example, your name, address, and sale price of your home. All of the information that we collect is referred to in this notice as "NAT Collected Information".
2. **What information North American Title Companies disclose to our affiliates:** From time to time, as permitted by law, the North American Title Companies may share NAT Collected Information with each other and with North American Advantage Insurance Services, LLC ("NAAIS") about customers and former customers. You may ask us not to share NAT Collected Information among the North American Title Companies and NAAIS by writing to us and letting us know at: North American Title Group, Inc., Attention: Corporate Affairs, 700 NW 107th Avenue, Suite 300, Miami, FL 33172. Your request will not affect NAT Collected Information that the North American Title Companies are otherwise permitted by law to share, such as, in certain circumstances, NAT Collected Information related to our experiences and transactions with you.
3. **What information North American Title Companies disclose to third parties:**
  - If permitted by federal law and the law of your state, we may disclose some or all of the following information to companies that perform marketing services on our behalf and to certain unaffiliated insurance companies with whom we have joint marketing agreements: your name, current address, purchased property address, and closing date.
  - We also may share NAT Collected Information about customers and former customers with other unaffiliated third parties, as permitted by law. For example, NAT Collected Information may be shared in certain circumstances (A) with companies involved in servicing or processing your account (B) with insurance regulatory authorities, and (C) with law enforcement officials, to protect against fraud or other crimes.
4. **Your right to access your personal information:** You have the right to review your personal information that we have on record about you. If you wish to review that information, please contact the local North American Title Company office identified on the title insurance product to which this notice is attached or where you received this notice and give us a reasonable time to make that information available to you. If you believe any information is incorrect, notify us, and if we agree, we will correct it. If we disagree, we will advise you in writing why we disagree.



**North American Advantage Insurance Services, LLC**

1. **Information North American Advantage Insurance Services, LLC ("NAAIS") collect and sources from which we collect it:** NAAIS collects personal information about you from you, our affiliates, or third parties on forms related to your transaction with NAAIS or a North American Title Company, such as your name, address, or information about the property that is or will be insured. We also receive information from companies, which compile and distribute public records. All of the information that NAAIS collects, as described in this paragraph, is referred to in this notice as "NAAIS Collected Information."

2. **Information NAAIS may disclose to its affiliates or third parties:** NAAIS may disclose NAAIS Collected Information about you or others without your permission as permitted or required by law, including to the following types of institutions for the reasons described:

- To a third party or an affiliate if the disclosure will enable that party to perform a business, professional or insurance function for us in connection with an insurance transaction involving you.
- To an insurance institution, agent, or credit reporting agency in order to detect or prevent criminal activity, fraud or misrepresentation in connection with an insurance transaction.
- To an insurance institution, agent, or credit reporting agency for either this agency or the entity to whom we disclose the information to perform a function in connection with an insurance transaction involving you.
- To an insurance regulatory authority, law enforcement, or other governmental authority in order to protect our interests in preventing or prosecuting fraud, or if we believe that you have conducted illegal activities.

3. **Your right to access and amend your personal information:** You have the right to request access to the personal information that we record about you. Your right includes the right to know the source of the information and the identity of the persons, institutions or types of institutions to whom we have disclosed such information within two (2) years prior to your request. Your right includes the right to view such information and copy it in person, or request that a copy of it be sent to you by mail (for which we may charge you a reasonable fee to cover our costs). Your right also includes the right to request corrections, amendments or deletions of any information in our possession. The procedures that you must follow to request access to or an amendment of your information are as follows:

To obtain access to your information: You should submit a request in writing to: North American Title Group, Inc., Attention: Corporate Affairs, 700 NW 107th Avenue, Suite 300, Miami, FL 33172. The request should include your name, address, social security number, telephone number, and the recorded information to which you would like access. The request should state whether you would like access in person or a copy of the information sent to you by mail. Upon receipt of your request, we will contact you within 30 business days to arrange providing you with access in person or the copies that you have requested.

To correct, amend, or delete any of your information: You should submit a request in writing to: North American Title Group, Inc., Attention: Corporate Affairs, 700 NW 107th Avenue, Suite 300, Miami, FL 33172. The request should include your name, address, social security number, telephone number, the specific information in dispute, and the identity of the document or record that contains the disputed information. Upon receipt of your request, we will contact you within 30 business days to notify you either that we have made the correction, amendment or deletion, or that we refuse to do so and the reasons for the refusal, which you will have an opportunity to challenge.



RECEIVED

DEC 21 2011

COMMUNITY DEV. DEPT.

\*\*\*\*\*

## SECURITY PROCEDURES

We restrict access to NAT Collected Information and NAAIS Collected Information about you to individuals who need to know such information in order to provide you with your product or service. We maintain physical, electronic and procedural safeguards to protect NAT Collected Information and NAAIS Collected Information about you.

\*\*\*\*\*

## CHANGES TO OUR PRIVACY POLICY

This Notice reflects our privacy policy as of February 1, 2008. We reserve the right to change, modify or amend this policy at any time. Please check our Privacy Policy periodically for changes.

---

1The North American Title Group Family of Companies are: North American Title Company, North American Title Insurance Company, North American Title Alliance, LLC, North American Title Florida Alliance, LLC, North American Services, LLC, North American Exchange Company, North American Title Agency, North American Abstract Agency and North American Legal Services, L.L.C.

\*\*\*\*\*

## ACKNOWLEDGEMENT

Your receipt of a copy of the preliminary report, commitment, your policy of insurance, or escrow documents accompanied by this Notice will constitute your acknowledgment of receipt of this Privacy Policy Notice.

RANCHO CANADA DEL HAMBRE  
 RECORD OF SURVEY 428,5,50 8,7,68  
 1- 22P.M.10 5-7-72  
 2- 24P.M.32 10-28-72  
 3- 35P.M.30 10-1-74  
 4- 41P.M.37 12-22-75  
 5- 66P.M.11 5-19-78  
 6- 68P.M.38 & 39 8-1-78  
 7- 103P.M.34 11-16-82



NOTE: THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE INFORMATION MAY NOT CORRELATE WITH LOCAL LOT OR CITY OR BUILDING SITE ORDINANCES.

ASSASSOR'S MAP  
 BOOK 365 PAGE 15  
 CONTRA COSTA COUNTY, CALIF.

RECEIVED  
 DEC 21 2011  
 COMMUNITY DEV. DEPT.

\* Copy of what was mailed to Carter Acres residents

Attachment #5



Ridge Communications, Inc.  
12667 Alcosta Blvd., Suite 175  
San Ramon, Ca. 94583

925.498.2340 | [www.ridgecommunicate.com](http://www.ridgecommunicate.com)

January 9, 2011



To: Residents of Carter Acres

From: Clarence Chavis

Re: Verizon's Wireless telecommunications Proposal at Carter Acres Lane

Dear Residents:

On December 13, 2011, Verizon's project went before a study session which gave residents and the planning commission an opportunity to review Verizon's Wireless Telecommunications Facility proposal on Carter Acres Lane. Throughout the review of the application the primary question that was left unanswered was the legality of Verizon having access to the road.

There was testimony from some of the residents that a homeowners association had the right to review and make a decision on Verizon's access on Carter Acres and the proposed facility itself. The meeting adjourned with Verizon being required to provide the proof that Verizon had the right to enter an agreement with the underlying property owner and the right to use the road without consent from the homeowner's association.

Attached is a letter from Verizon's counsel, addressed to the City of Martinez, who has reviewed the proposed land lease agreement and the access rights to use the road. Based on the findings, it is determined that upon acceptance of the land lease agreement, Verizon will have access rights to use Carter Acres lane for construction purposes and for maintenance inspections when the site is developed.

It was the direction of the Planning Commission and the Planning Department for Verizon to reach out to the neighbors regarding this project. To date, we have established a neighborhood meeting, a study session and clarified the access issues for this proposal.

Ridge Communications, Inc. is representing Verizon Wireless on this application and will serve as the primary contact for this proposal. Thank you for your time.

Sincerely,

Clarence Chavis  
Site Acquisition Specialist  
Ridge Communications, Inc.  
(925) 498-2340 office  
(925) 498-2341 fax  
[clarence.chavis@ridgecommunicate.com](mailto:clarence.chavis@ridgecommunicate.com)

cc: Anjana Mepani, Associate Planner, City of Martinez

McGuireWoods LLP  
1000 Century Park East  
8th Floor  
Los Angeles, CA 90067  
Phone: 310.315.8200  
www.mcguirewoods.com

Lindsey Hansen  
Direct: 310.956.3412

McGUIREWOODS

lhansen@mcguirewoods.com  
Direct Fax: 310.956.3185  
File #1580036-1322

December 20, 2011

**VIA OVERNITE EXPRESS**

Anjana Mepani  
Associate Planner  
City of Martinez  
525 Henrietta Street  
Martinez, CA 94553

**RE: Use of Carter Acres Lane by GTE Mobilnet of California Limited Partnership, dba Verizon Wireless ("Verizon Wireless") in connection with Land Lease Agreement dated July 13, 2011 (the "Lease") between Verizon Wireless and Michael H. Hansen and Norma Hansen, as Trustees of the Hansen Family Trust, under Declaration of Trust dated \_\_\_\_, 2002, for the benefit of Michael H. Hansen and Norma Hansen (collectively, "Landlord")**  
**Our Client: Verizon Wireless**

Dear Ms. Mepani,

Pursuant to the Lease, Verizon Wireless has leased from Landlord a portion of the property (the "Premises") located at 814 Carter Acres Lane, Martinez, California (the "Property") for the construction, operation and maintenance of a communications facility. Landlord is the owner of the Property. Under the Lease, Verizon Wireless has the right to access the Premises via Carter Acres Lane. Landlord has the right to grant Verizon Wireless such access rights over Carter Acres Lane because Landlord is the owner of a non-exclusive easement for access and utility purposes encompassing Carter Acres Lane. The location of the easement is shown on the enclosed survey prepared by Foresight Land Surveying & Engineering dated August 30, 2011. This easement is appurtenant to the Property and is shown as Parcel Two in the legal description of the Property on the enclosed North American Title Company preliminary title report dated January 13, 2011. Therefore, Verizon Wireless' right to use Carter Acres Lane for access to the Premises derives from Landlord's easement interest in it.

Verizon Wireless has agreed under the Lease to make a one-time payment to the Carter Acres Community Road Fund in the amount of Thirty Thousand Dollars (\$30,000.00) for future improvements to be made to Carter Acres Lane. Verizon Wireless will pay such amount to the

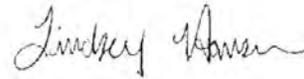
Atlanta | Austin | Baltimore | Brussels | Charlotte | Charlottesville | Chicago | Houston | Jacksonville | London  
Los Angeles | New York | Norfolk | Pittsburgh | Raleigh | Richmond | Tysons Corner | Washington, D.C. | Wilmington

FILE COPY

Carter Acres Community Road Fund within forty-five (45) days after the commencement date of the Lease.

Verizon Wireless does not believe that any additional approvals are necessary for its use of Carter Acres Lane. Please feel free to contact me if you need any further information or would like to discuss this issue.

Very truly yours,



Lindsey R. Hansen, Esq.

Enclosures

cc: Peter Maushardt (via e-mail w/o encls.)  
Shannon Collins (via e-mail w/o encls.)  
John McGaughey (via e-mail w/o encls.)  
Lisa A. Atty, Esq. (w/o encls.)



Copyright ©2012, Digital Map Products, Microsoft, County Appraiser, TeleAtlas, Customer Data



Copyright (C) 2007, Digital Map Products. All rights reserved.



1" = 283'



CityGIS

	APN	PROP_ADDRESS	PROP_CITY	PROP_STATE	PROP_ZIP
1	3651300109	854 CARTER ACRES LN	MARTINEZ	CA	94553
2	3651500773	CARTER ACRES LN	MARTINEZ	CA	94553
3	3651500765	854 CARTER ACRES LN	MARTINEZ	CA	94553
4	3651500492	844 CARTER ACRES LN	MARTINEZ	CA	94553
5	3651500500	834 CARTER ACRES LN	MARTINEZ	CA	94553
6	3651500526	824 CARTER ACRES LN	MARTINEZ	CA	94553
7	3651500534	814 CARTER ACRES LN	MARTINEZ	CA	94553
8	3651500732	2495 RELIEZ VALLEY RD	MARTINEZ	CA	94553



January 17, 2012

Mr. Clarence Chavis  
Ridge Communications  
12667 Alcosta Blvd. #175  
San Ramon, Ca. 94583

Dear Mr. Chavis,

We are in receipt of your letter to the Residents of Carter Acres Lane dated January 9, 2012. In this letter you state that the primary question left unanswered during the review of Verizon's proposal before the Martinez planning commission was "the legality of Verizon having access to the road."

Not only do we disagree with your legal counsel's opinion, we would like to emphasize that there is another question that needs to be addressed even before the legality of road access is debated. That question is whether or not Mike and Norma Hansen had the right to sign a lease with Verizon without approval of their neighbors.

If you recall from points raised during the study session of December 13, 2011 there seems to be language in the Reliez Valley (Carter Acres) Homeowner's Association documents that inhibits a person's ability to make any improvement or contracts affecting the road without prior approval of the neighbors.

If the Hansens acted without necessary approval then any lease signed is invalid and voidable.

If Ridge Communications and Verizon Wireless intend to proceed with the application to the city of Martinez for installation of their "project" then we intend to hire legal counsel to defend our property rights. Remember, one of the Planning Commissioners remarked to you at the study session of December 13, "Verizon would be wise to look at alternate locations for this proposed project". We concur with that statement.

Sincerely,

*Simone St. Clare*

Simone St. Clare  
824 Carter Acres Lane

Mark and Christine Scharmer  
834 Carter Acres Lane

*Christine Scharmer*  
*Mark Scharmer*

cc: Anjana Mepani, Associate Planner, City of Martinez



Ridge Communications, Inc.  
12667 Alcosta Blvd., Suite 175  
San Ramon, Ca. 94583

925.498.2340 | [www.ridgecommunicate.com](http://www.ridgecommunicate.com)

March, 5, 2012



To: Anjana Mepani  
Associate Planner  
City of Martinez  
525 Henrietta Street  
Martinez, CA 94553-2394

From: Clarence Chavis

Re: 814 Carter Acres Lane; APN: 365-150-053  
Address Incomplete Letter dated 2/21/12

Dear Ms. Mepani:

In response to your letter dated February 21, 2012 pertaining to your review of the items I submitted on January 23, 2012. The following is to address the outstanding items that deemed this application incomplete.

**A. Study Session Comments**

I listened to the December 11, 2011 Study Session in its entirety. Below is a synopsis and the explanation of what was done to address the questions.

Mrs. Christine Scharmer; 834 Carter Acres Lane

- Mrs. Scharmer stated for the record that any access to the private road has to be approved through the Homeowners Association.
- Mrs. Scharmer stated back in 2003 the owners met for the T-Mobile proposal and the results were \$60,000 paid by T-Mobile for road improvements.
- The neighbors were not notified when Verizon conducted their civil review at the site.
- Property values have been affected due to the existing power lines.
- Back in 2004, the prior residents of 824 Carter Acres Lane tried to sell their house and no one was interested. Finally the property was sold to Ms. St. Claire.
- Mrs. Scharmer stated there is controversy surrounding the use of cell phones that are related to health issues and negative property values.

Ms. Simone St. Clare; 824 Carter Acres Lane

- Residents of Clark Land Division automatically become members of the Reliez Valley Home Owners Association (Ratified on 9/21/72)

- Carter Acres Lane is a private road that is paid for by the owners and maintained by the owners.

Chip Griffin

- Nearby resident who is concerned about lack of cell phone coverage in the area.
- Former employee of Ridge Communications, Inc., who is a nearby resident.
- Coordinated the initial community meeting with Carter Acres Lane on July 6, 2011.
- Identified the coverage maps which showed poor coverage in the Reliez Valley Corridor which is the primary reason for Verizon's proposal at this location.

Ms. Simone St. Clare

- There was an informational meeting at Mike Hansen's house. We were not told there was a contract between Verizon and Mike Hansen.

Mrs. Christine Scharmer

- The idea that the Cell Phone tower that would raise property values may be true if you don't live near the tower.

The Planning Commission would like to have the issue of access resolved before this project returns to the Planning Commission for approval/denial of this project.

Commissioner Blair

This is a private matter (use of the private road) between Verizon and the homeowners. This is not something we (City of Martinez) would make a judgment on. We would not be the decision makers based on any documents we receive.

Ms. Simone St. Clare

- (Addressing Commissioner Blair) When you receive documentation that there are things the "run with the land" isn't that the scope of your jurisdiction.

Commissioner Blair

This is private property and not under City of Martinez control. Any judgments would be between homeowners and Verizon.

Toward the end of the study session, I agreed to review the issue of Verizon having the ability to enter into an agreement with the property owner for the use of the private road.

**Resolution from the Planning Commission**

Based on the study session, the primary concerns of the residents are as follows:

- Verizon's cannot enter into an agreement with the property owner without permission from the HOA.
- Verizon cannot utilize the private road without approval from the HOA.
- Property values suffer with the existing PG&E tower and Verizon's installation will make it worse.
- Potential health concerns with this proposal.



- Neighbors were not notified of the on-site "Civil Review" and not notified on the contractual agreement with Verizon.

Based on the study session, the primary concerns of the Planning Commissioners were as follows:

- The Planning Commissioners will require verification that Verizon would have access to use the private road.

Based on the outcome of the study session, Verizon has taken the following action:

- Reviewed the contractual agreement and title to properties for the Carter Acres Lane neighborhood. Based on the findings from Verizon's legal counsel, it is determined that Verizon can lawfully enter an agreement with the property owner and coordinated the use of the access road through this agreement.
- Verizon has maintained the one-time payment to pay for road improvements which is the similar stance T-Mobile choose to do.
- Verizon has mailed the findings of their legal counsel to the residents of Carter Acres Lane.
- The property owner has informed us that the HOA is inactive and doesn't recall a meeting during his years as a resident of the subdivision.
- Verizon has modified the configuration of the equipment area based on the concerns of the City's Planning Department and Engineering Department for better visibility for vehicles driving around the existing PG&E tower.

In addition to the above actions Verizon has previously:

- Conducted an independent review of all emissions from the proposed Verizon site and the existing T-Mobile site and submitted its findings to the City which explains the combined facilities would meet the emission requirements governed by the FCC.
- During this process, Verizon has reached out to the neighbors through a community meeting, study session with the Planning Commission and through mail regarding access to the site.
- The civil review was to determine the feasibility of the construction of the potential site only and not to be a decision making process without the residents knowledge.

#### Property Values

In addition, studies are inconclusive for the argument that property values will be ruined with the addition of a wireless communication facility. In many cases lack of coverage is often a major concern for homeowners and vital for emergency services for residents and customers in the area. Regarding property values, the major issue appears to be the existing PG&E tower which the residents had full knowledge of existing before they choose to purchase their homes.

#### **B. Access Rights**

The outstanding question from the study session from the December 13, 2011 study session is the access rights Verizon has to the site and can Verizon enter an agreement with the property owner to access their equipment. Opposition from a few neighbors was raised under the belief the project is to go before the homeowner's association for a vote. However the homeowner's association is inactive and hasn't held meetings. Verizon has had their attorney counsel review



the title report and inquiries from the neighbors who questioned Verizon's position. It was determined by Verizon's attorney that Verizon does have the right to enter into an agreement with the property owner for access to the site and the development of the wireless communications facility itself. Verizon has also agreed to provide funding for road improvements to the site.

Since the submittal of Verizon's attorney letter to the neighbors on January 9, 2012, we have not had further correspondence with the residents of Carter Acres except with Mr. Hansen the property owner in question. Since that time I have not responded to the January 17, 2012 letter submitted by Ms. St. Clare and Mr. & Mrs. Scharmer regarding their response to the letter they received from Verizon's attorney.

I have reviewed the mailing list of residents I sent the attorney's letter to in order to determine if all the Carter Acres' residents were addressed. I have determined all of the neighbors were addressed when the letter went out.

### **C. Line of Sight**

Upon meeting the Associate Engineer and yourself regarding the line of sight concern with our equipment area, I went back to Verizon and asked if they can change the configuration of the equipment area to meet this request. Verizon has made a decision to modify the equipment area to meet this request. Since that time we have submitted revised drawings with the new equipment modification and the installed stakes under the tower to outline the new configuration of the equipment area. Verizon has space requirements for all their cabinets for access for installation and repairs. The cabinets themselves have doors that swing open for repairs and maintenance purposes. It is important that the right amount of space is required for the opening of cabinet doors and for the maintenance engineer to work on the project. These concerns are built in to the lease space required by Verizon for the installation of their facilities.

Verizon has taken measures to help alleviate the line of sight concern. Overall based on the lease area configuration, Verizon has made great strides to address this issue. However Verizon does not wish to take responsibility for any potential vehicular problems that may be caused through a variety of concerns and occurrences. This is a private road with only 5 houses that are beyond the PG&E Tower so vehicular traffic will be low and safe to navigate at the proper speed limit. Verizon is willing to install new traffic signs near the site if requested and approved the homeowners.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Clarence Chavis  
(925) 498-2340 office  
(925) 498-2341 fax  
clarence.chavis@ridgecommunicate.com





Ridge Communications, Inc.

12667 Alcosta Blvd., Suite 175

San Ramon, Ca. 94583

925.498.2340 | [www.ridgecommunicate.com](http://www.ridgecommunicate.com)

October 28, 2011, 2011

Anjana Mepani  
City of Martinez  
Planning Department  
525 Henrietta Street  
Martinez, CA 94553



**RE: Verizon Cellular Site at 814 Carter Acres Road – VZW Site Number 248124  
Second Submittal**

In response to your letter dated August 12, 2011, RCI and Verizon Wireless respectfully submit the items identified therein. To re-state, according to various City wireless telecommunication regulations, this is a co-location project utilizing an existing PG&E tower in a residentially zoned property. The site will provide cell and LTE (3G) coverage to areas that currently receive no or inadequate coverage in the Alhambra Valley and surrounding areas. This site is consistent with the requirements found in MMC Section 22.39.050.2.C.2. - Use Permit and Review Approval by Zoning Administrator as it is a co-located facility in an area other than Commercial, Industrial, Professional, or Governmental Uses.

To gain the required separation from PG&E power lines and to get necessary coverage, PG&E will attach a twelve foot extension to the top of their tower to accommodate nine new panel antennas in three sectors. The individual antennas are up to 8 feet tall and 1 foot wide as shown in the attached specifications. The equipment will be on the ground within the footprint of the tower, adjacent to existing T-Mobile equipment.

The equipment will be set on a 15'-8" x 30'-2" cast in place concrete slab. One design revision we did was to lower the VZW slab elevation an additional foot (2-foot total) from T-MOB to further address potential visual impact. This is a typical design mitigation measure / design element for construction on a slope.

The equipment area is surrounded by an 8' tall solid wooden fence, 2' higher than originally proposed and effectively screens all equipment from all sides. In addition to the elevation drawings, we have provided revised photo simulations to emphasize this revision.

The equipment includes two modcell, two LTE, and two battery cabinets, a 30kw standby generator for emergency use, two GPS antennas, four service lights, and other associated equipment.

The nearest inhabited structure (property owner) is over 100 feet away from the foot of the tower. This distance along with the solid fence, will mitigate noise generated from the site to achieve the noise ordinance requirements in relation to nearest residences. The nearest residence besides the landlord is more than 200 feet away. However, we have attached a Noise Study (Hammet & Edison) that measures proposed db levels at the nearest property line. The study made recommendations that have been incorporated into the revised plans. As stated in the study, these revisions provide the mitigation for this project to comply with the City noise ordinance.

Verizon technicians will visit the site approximately twice a month to test equipment. This regular maintenance includes a twenty minute test of the stand-by generator. These visits are typically during daylight hours, Monday through Friday. Technician will park in the private driveway area of the landlord as noted on the revised drawings.

Included in this submittal package are the following plans:

- Letter of Explanation (this letter)
- (3) sets revised plans - full size
- (5) sets revised plans (11"x17") - including Site Plan, Elevations, and Details

And the following attachments:

- A. Noise Study – Hammett & Edison
- B. Equipment Tech sheet (Andrew )
- C. Revised cell coverage maps / existing and proposed area maps of City
- D. Letter of Authorization VZW
- E. Notice of Neighborhood Meeting
- F. Meeting Signup Sheet
- G. Letter of Authorization PG&E
- H. Revised photo sims

Below are our direct responses to the City's comments and requests and for revisions and additional materials. Please review and call with any questions. The City's comments are in *italics* with responses following individually.

## ITMES TO COMPLETE APPLICATION – PART 1 – PLANNING

### A. Corrections to Plans

1. *Sheet A-2 – Equipment Layout: Please remove all reference to future items on the plans, as all future items will require appropriate permits, approvals, and review at the respective application time.*

Please refer to revised Sheet A-2. All reference to "future" use is deleted.

### B. Additional Information Needed on Fence

1. *For the equipment enclosure, use a higher solid wooden fence to effectively screen all the items located in the enclosure from all directions. Provide fence details (e.g. color, materials, and style).*

Please refer to revised Sheet A-2 to A-5 for fence height and detail. The fence height has been increased to 8' and is tall enough to conceal all equipment within. Fence design includes double solid vertical redwood boards with 1" battens. The fence is also capped for a handsome finish. The proposed finish is neutral clear coat.

2. *It appears that the proposed fence will enclose T-Mobile's existing equipment cabinets. Provide copies of coordination correspondence or information with T-Mobile regarding the enclosure.*

Please refer to Sheets A-2 to A-5. The fence surrounds only the VZW equipment and does not encroach into TMOB area. PG&E has provided a signed plan check of all revisions.

In addition, the slab elevation for VZW has been lowered 1' for a total separation of 2' between TMOB and VZW in a further effort to address potential visual impact.

C. Additional Information Needed on Noise

2. *Provide additional noise information for the equipment cabinets as the acoustic noise information on the data sheet provided exceeds the City's exterior standard of 60db. The additional noise information should include the combined db levels of the proposed equipment cabinets along with relevance to the distance to nearby residences and property lines.*

Attachment A is a certified noise study provided from a leading and respected radio frequency and noise consulting firm (Hammet & Edison). The report included cumulative noise levels from the proposed site and the existing site. The conclusion includes design recommendations necessary before the acoustic engineer would certify compliance with the City's ordinance of 60 db at property line. These recommendations have been incorporated into the design and are included herein. (See Sheets A2 and A5)

D. Additional Information Needed on Wireless Facility

1. *Provide more detailed information on the service and maintenance schedule (e.g., hours, days, noise, vehicle parking, loading, and weight, etc.) for the wireless facility as the site is located in a residential area. All require legal access to the site shall be researched and obtained by the applicant.*

See Sheet A-1. The portions of road to be used by Verizon during construction and/or maintenance are located on the landlord property (814 Carter Acres) and are considered in the lease agreement. VZW has also agreed to pay a large sum of money into the owner's road maintenance fund. Parking for VZW activities will be provided in the driveway of 814 Carter Acres Lane, off the street.

2. *Provide antenna details and color information. The antennas should be the same color as the PG&E tower in order to minimize visual impact.*

See Attachment B named COMMSCOPE for antenna details. See Sheets A-3 and A-4 for elevation notes. Panels will be painted to match exiting tower and proposed extension.

3. *Provide details and color information on the 12' tower extension. The extension should be the same color as the antennas and PG&E tower in order to minimize visual impact.*

See Sheets A-3 and A-4 for elevation notes. Panels will be painted to match exiting tower and proposed extension.

4. *Per the submittal requirements for Telecommunication Facilities, provide a list and map showing Verizon Wireless facilities for the entire city and areas within the sphere of influence, including existing, approved, and proposed planned sites.*

See Attachment C depicting all VZW sites in and around Martinez. Verizon has no new other new sites on the immediate horizon.

E. Additional Information Needed

1. *Provide a letter from Verizon Wireless stating the Ridge Communications, Inc. is an authorized agent that may act on their behalf on this application. The letter must be Verizon Wireless letterhead and must include contact information.*

See Attachment D for RCI LOA.

2. *Planning staff strongly encouraged public outreach for wireless telecommunication facilities in residentially zoned areas. In writing, provide information on the public outreach conducted for the proposed project, if any.*

See Attachments E and F - Notice of Meeting and Signup Sheet. RCI held a community meeting attended by every owner occupant of Carter Acres. The one exception was 854 Carter Acres Lane as the previous occupants are deceased. However, the landlord has contacted the trustees (children) whom live out of state. The property is currently rented; the tenants did not reply to the meeting notice.

The meeting was held at the Hansen residence (landlord). In attendance were myself and an RF engineer from Hammet & Edison. We described the project and answered questions.

## ITEMS TO COMPLETE APPLICATION – PART 2 – ENGINEERING

### A. Correction to Plans

1. *Show proposed drainage patterns on plans. Drainage shall be to the road.*

See Sheet A2 Equipment Area Plan, Note 13. Additional details, if needed, can be provided with Building Plans.

### B. Additional Information Needed – Letters

1. *Provide a letter of authorization or approval letter from the Homeowners Association.*

There is no active HOA for Carter Acres. VZW vehicles will not trespass on any other property besides 814 Carter Acres.

2. *Provide a letter of authorization or lease agreement from PG&E*

See Attachment G.

Please review these materials and call or email ([chip.griffin@ridgecommunte.com](mailto:chip.griffin@ridgecommunte.com)) with any comments or revisions. We look forward to working with you and your Department and to getting this project completed.

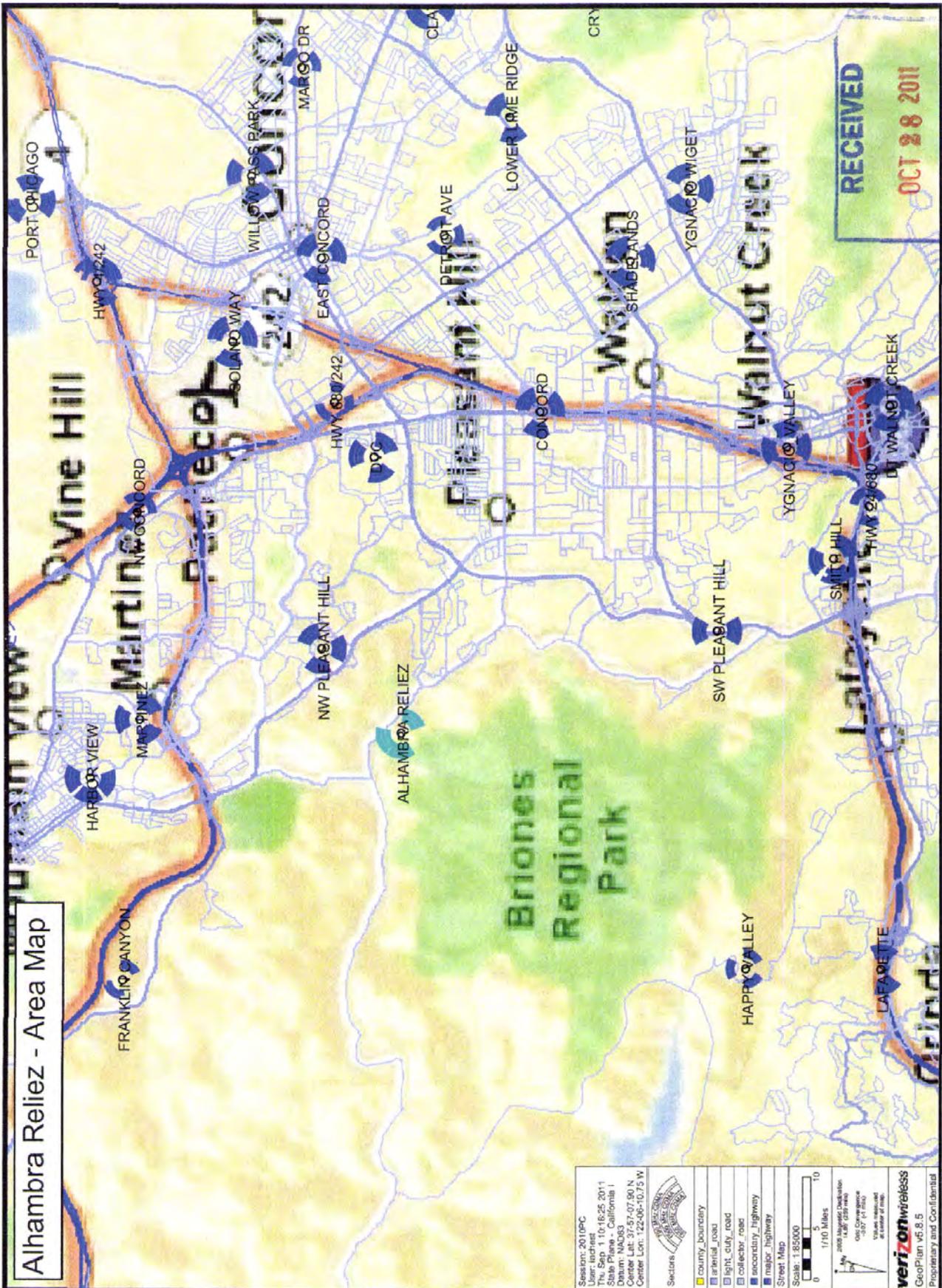
Sincerely yours,

**RIDGE COMMUNICATIONS**



Chip Griffin, AICP

Attachments







**Verizon Wireless • Proposed Base Station (Site No. 248124 "Alhambra-Reliez")  
814 Carter Acres Lane • Martinez, California**

**Statement of Hammett & Edison, Inc., Consulting Engineers**

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained on behalf of Verizon Wireless, a personal telecommunications carrier, to evaluate its base station (Site No. 248124 "Alhambra-Reliez") proposed to be located at 814 Carter Acres Lane in Martinez, California, for compliance with appropriate guidelines limiting sound levels from the installation.

**Executive Summary**

Verizon proposes to install a new base station at the base of a tall lattice tower located at 814 Carter Acres Lane in Martinez. The proposed operation will, together with the existing base station at the site, comply with the City's Code limiting noise emissions from the site.

**Prevailing Standard**

The City of Martinez sets forth regulations on sound levels in Chapter 8.34 (Noise Control) of its Code of Ordinances, including in Section 8.34.020 the following limits for noise:

<u>Time Period</u>	<u>Noise Limit</u>
"Day" 7 a.m. to 10 p.m.	60 dBA
"Night" 10 p.m. to 7 a.m.	50 dBA

Figure 1 attached describes the calculation methodology used to determine applicable noise levels for evaluation against the prevailing standard.

**General Facility Requirements**

Wireless telecommunications facilities ("cell sites") typically consist of two distinct parts: the electronic base transceiver stations ("BTS" or "cabinets") that are connected to traditional wired telephone lines, and the antennas that send wireless signals created by the BTS out to be received by individual subscriber units. The BTS are often located outdoors at ground level and are connected to the antennas by coaxial cables. The BTS typically require environmental units to cool the electronics inside. Such cooling is often integrated into the BTS, although external air conditioning may be installed, especially when the BTS are housed within a larger enclosure.

Most cell sites have back-up battery power available, to run the site for some number of hours in the event of a power outage. Many sites have back-up power generators installed, to provide continued operation of the base stations during an extended power outage.



**Verizon Wireless • Proposed Base Station (Site No. 248124 "Alhambra-Reliez")  
814 Carter Acres Lane • Martinez, California**

**Site & Facility Description**

According to information provided by Verizon Wireless, including zoning drawings by Delta Groups Engineering, Inc., dated July 8, 2011, and a site detail, dated October 10, 2011, that carrier proposes to install five equipment cabinets – two Lucent "Modcell," two for LTE (assumed for the purpose of this study to be Ericsson Model 6601, and one for batteries (assumed to be a Commscope Model RBA72) – on a concrete pad within a fence enclosure to be constructed at the base of the 162-foot PG&E lattice tower sited west of the two-story residence located at 814 Carter Acres Lane in Martinez.

Also within the fenced enclosure, Verizon proposes to install a Generac Model SD030 stand-by diesel power generator for emergency use, in the event of a commercial power outage. Such generators typically operate for a 15-minute test period once a week during normal business hours on a non-holiday weekday, in order to ensure their readiness in the event of a power outage.

The nearest property line is to the northwest, at a distance of 5 feet from the enclosure. The property lines in other directions are considerably farther away.

Presently located under the tower are two cabinets, assumed to be Ericsson Model 2106/3106, for use by T-Mobile, another telecommunications carrier, with directional panel antennas installed about 68 feet above ground on the existing 162-foot PG&E lattice tower. Verizon proposes to install its own antennas at the top of tower. Neither the tower nor the antennas emit acoustic energy.

**Study Results**

The equipment manufacturers report maximum sound pressure reference levels as follows:

<u>Manufacturer</u>	<u>Reference* Noise Level</u>	<u>Reference Distance</u>	<u>Reference Direction</u>
Lucent	65.0 dBA	5 ft	rear
Ericsson (6601)	53.0	1 m	front
Commscope	58.7	5 ft	any
Ericsson (x106)	60.2	1 m	front
Generac	65.6	23 ft†	front

The calculated noise level at the nearest property line for the combined operations of all the fans in all five Verizon equipment cabinets is 47.9 dBA. Including the simultaneous operation of the two T-Mobile cabinets, the calculated cumulative noise level 48.8 dBA, which is under the City's most restrictive nighttime limit of 50 dBA.

\* Adjusted as required to approximate noise level at 100°F ambient temperature.

† Measured from the center of the unit.

**Verizon Wireless • Proposed Base Station (Site No. 248124 "Alhambra-Reliez")  
814 Carter Acres Lane • Martinez, California**

For the day on which the generator is tested, the additive noise level over the 15-hour "daytime" period specified in the City Code is 48.3 dBA. This brings the cumulative average daytime noise level, for the Verizon and T-Mobile cabinets plus the generator, to 51.5 dBA, well below the City's daytime limit of 60 dBA.

**Conclusion**

Based on the information and analysis above, it is the undersigned's professional opinion that the operation of the Verizon Wireless base station proposed to be located at 814 Carter Acres Lane in Martinez, California, will comply with that city's standards limiting acoustic noise emission levels and, therefore, will not for this reason have an adverse impact on the environment.

**Authorship**

The undersigned author of this statement is a qualified Professional Engineer, holding California Registration Nos. E-13026 and M-20676, which expire on June 30, 2013. This work has been carried out under his direction, and all statements are true and correct of his own knowledge except, where noted, when data has been supplied by others, which data he believes to be correct.

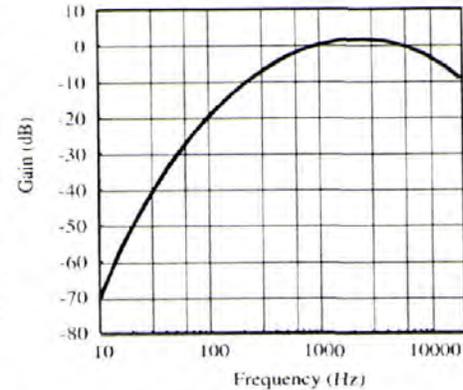
October 25, 2011



*William F. Hammett*  
William F. Hammett, P.E.  
707/996-5200

## Noise Level Calculation Methodology

Most municipalities and other agencies specify noise limits in units of dBA, which is intended to mimic the reduced receptivity of the human ear to Sound Pressure (“ $L_p$ ”) at particularly low or high frequencies. This frequency-sensitive filter shape, shown in the graph to the right as defined in the International Electrotechnical Commission Standard No. 179, the American National Standards Institute Standard No. 5.1, and various other standards, is also incorporated into most calibrated field test equipment for measuring noise levels.



30 dBA	library
40 dBA	rural background
50 dBA	office space
60 dBA	conversation
70 dBA	car radio
80 dBA	traffic corner
90 dBA	lawnmower

The dBA units of measure are referenced to a pressure of 20  $\mu$ Pa (micropascals), which is the threshold of normal hearing. Although noise levels vary greatly by location and noise source, representative levels are shown in the box to the left.

Manufacturers of many types of equipment, such as air conditioners, generators, and telecommunications devices, often test their products in various configurations to determine the acoustical emissions at certain distances. This data, normally expressed in dBA at a known reference distance, can be used to determine the corresponding sound pressure level at any particular distance, such as at a nearby building or property line. The sound pressure drops as the square of the increase in distance, according to the formula:

$$L_p = L_k + 20 \log(D_k/D_p),$$

where  $L_p$  is the sound pressure level at distance  $D_p$  and  $L_k$  is the known sound pressure level at distance  $D_k$ .

Individual sound pressure levels at a particular point from several different noise sources cannot be combined directly in units of dBA. Rather, the units need to be converted to scalar sound intensity units in order to be added together, then converted back to decibel units, according to the formula:

where  $L_T$  is the total sound pressure level and  $L_1, L_2,$  etc are individual sound pressure levels.

$$L_T = 10 \log (10^{L_1/10} + 10^{L_2/10} + \dots),$$

Certain equipment installations may include the placement of barriers and/or absorptive materials to reduce transmission of noise beyond the site. Noise Reduction Coefficients (“NRC”) are published for many different materials, expressed as unitless power factors, with 0 being perfect reflection and 1 being perfect absorption. Unpainted concrete block, for instance, can have an NRC as high as 0.35. However, a barrier’s effectiveness depends on its specific configuration, as well as the materials used and their surface treatment.



**Verizon Wireless • Proposed Base Station (Site No. 248124 "Alhambra Reliez")  
814 Carter Acres Lane • Martinez, California**

**Statement of Hammett & Edison, Inc., Consulting Engineers**

The firm of Hammett & Edison, Inc., Consulting Engineers, has been retained on behalf of Verizon Wireless, a personal wireless telecommunications carrier, to evaluate the base station (Site No. 248124 "Alhambra Reliez") proposed to be located at 814 Carter Acres Lane in Martinez, California, for compliance with appropriate guidelines limiting human exposure to radio frequency ("RF") electromagnetic fields.

**Executive Summary**

Verizon proposes to install directional panel antennas on the tall PG&E lattice tower sited in front of the residence located at 814 Carter Acres Lane in Martinez. The proposed operation will, together with the existing base station at the site, comply with the FCC guidelines limiting public exposure to RF energy.

**Prevailing Exposure Standards**

The U.S. Congress requires that the Federal Communications Commission ("FCC") evaluate its actions for possible significant impact on the environment. A summary of the FCC's exposure limits is shown in Figure 1. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. The most restrictive FCC limit for exposures of unlimited duration to radio frequency energy for several personal wireless services are as follows:

Wireless Service	Frequency Band	Occupational Limit	Public Limit
Microwave (Point-to-Point)	5,000–80,000 MHz	5.00 mW/cm <sup>2</sup>	1.00 mW/cm <sup>2</sup>
BRS (Broadband Radio)	2,600	5.00	1.00
AWS (Advanced Wireless)	2,100	5.00	1.00
PCS (Personal Communication)	1,950	5.00	1.00
Cellular	870	2.90	0.58
SMR (Specialized Mobile Radio)	855	2.85	0.57
700 MHz	700	2.35	0.47
[most restrictive frequency range]	30–300	1.00	0.20

Power line frequencies (60 Hz) are well below the applicable range of these standards, and there is considered to be no compounding effect from simultaneous exposure to power line and radio frequency fields.

**RECEIVED**

JUL 15 2011

COMMUNITY DEV. DEPT.

**Verizon Wireless • Proposed Base Station (Site No. 248124 "Alhambra Reliez")  
814 Carter Acres Lane • Martinez, California**

**General Facility Requirements**

Base stations typically consist of two distinct parts: the electronic transceivers (also called "radios" or "channels") that are connected to the traditional wired telephone lines, and the passive antennas that send the wireless signals created by the radios out to be received by individual subscriber units. The transceivers are often located at ground level and are connected to the antennas by coaxial cables. A small antenna for reception of GPS signals is also required, mounted with a clear view of the sky. Because of the short wavelength of the frequencies assigned by the FCC for wireless services, the antennas require line-of-sight paths for their signals to propagate well and so are installed at some height above ground. The antennas are designed to concentrate their energy toward the horizon, with very little energy wasted toward the sky or the ground. Along with the low power of such facilities, this means that it is generally not possible for exposure conditions to approach the maximum permissible exposure limits without being physically very near the antennas.

**Computer Modeling Method**

The FCC provides direction for determining compliance in its Office of Engineering and Technology Bulletin No. 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radio Frequency Radiation," dated August 1997. Figure 2 attached describes the calculation methodologies, reflecting the facts that a directional antenna's radiation pattern is not fully formed at locations very close by (the "near-field" effect) and that at greater distances the power level from an energy source decreases with the square of the distance from it (the "inverse square law"). The conservative nature of this method for evaluating exposure conditions has been verified by numerous field tests.

**Site and Facility Description**

Based upon information provided by Verizon, including zoning drawings by Delta Groups Engineering, Inc., dated April 29, 2011, it is proposed to install nine Andrew directional panel antennas – six Model LNX-6515DS-VTM and three Model HBX-6517DS-VTM – on a 12-foot extension to the existing 174-foot PG&E lattice tower sited in front of the residence located at 814 Carter Acres Lane in Martinez. The antennas would be mounted with up to 4° downtilt at an effective height of about 170 feet above ground and would be oriented in groups of three (two LNX and one HBX) toward 130°T, 270°T, and 340°T. The maximum effective radiated power in any direction would be 3,070 watts, representing simultaneous operation at 390 watts for PCS, and 2,280 watts for cellular, and 400 watts for 700 MHz service.

**Verizon Wireless • Proposed Base Station (Site No. 248124 "Alhambra Reliez")  
814 Carter Acres Lane • Martinez, California**

Presently located on the same tower are similar antennas for use by T-Mobile. For the limited purpose of this study, the transmitting facilities of that carrier are assumed to be as follows:

Operator	Service	Maximum ERP	Antenna Model	Downtilt	Height
T-Mobile	AWS	1,500 watts	Andrew TMBX-6516	2°	80½ ft
	PCS	1,500			

**Study Results**

For a person anywhere at ground, the maximum RF exposure level due to the proposed Verizon operation by itself is calculated to be 0.00042 mW/cm<sup>2</sup>, which is 0.074% of the applicable public exposure limit. The maximum calculated cumulative level at ground, for the simultaneous operation of both carriers, is 0.16% of the public exposure limit. The maximum calculated cumulative level at the second-floor elevation of any nearby residence\* is 0.19% of the public exposure limit. It should be noted that these results include several "worst-case" assumptions and therefore are expected to overstate actual power density levels.

**No Recommended Mitigation Measures**

Due to their mounting locations, the Verizon antennas would not be accessible to the general public, and so no mitigation measures are necessary to comply with the FCC public exposure guidelines. It is presumed that PG&E already takes adequate precautions to ensure that there is no unauthorized access to its tower. To prevent exposures in excess of the occupational limit by authorized PG&E workers, it is expected that they will adhere to appropriate safety protocols adopted by that company.

**Conclusion**

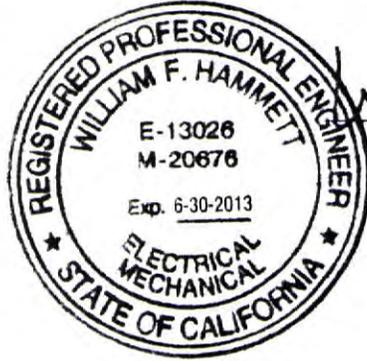
Based on the information and analysis above, it is the undersigned's professional opinion that operation of the base station proposed by Verizon Wireless at 814 Carter Acres Lane in Martinez, California, will comply with the prevailing standards for limiting public exposure to radio frequency energy and, therefore, will not for this reason cause a significant impact on the environment. The highest calculated level in publicly accessible areas is much less than the prevailing standards allow for exposures of unlimited duration. This finding is consistent with measurements of actual exposure conditions taken at other operating base stations.

\* Located at least 110 feet away, based on photographs from Google Maps.

Verizon Wireless • Proposed Base Station (Site No. 248124 "Alhambra Reliez")  
814 Carter Acres Lane • Martinez, California

Authorship

The undersigned author of this statement is a qualified Professional Engineer, holding California Registration Nos. E-13026 and M-20676, which expire on June 30, 2013. This work has been carried out under his direction, and all statements are true and correct of his own knowledge except, where noted, when data has been supplied by others, which data he believes to be correct.



*William F. Hammett*

William F. Hammett, P.E.

707/996-5200

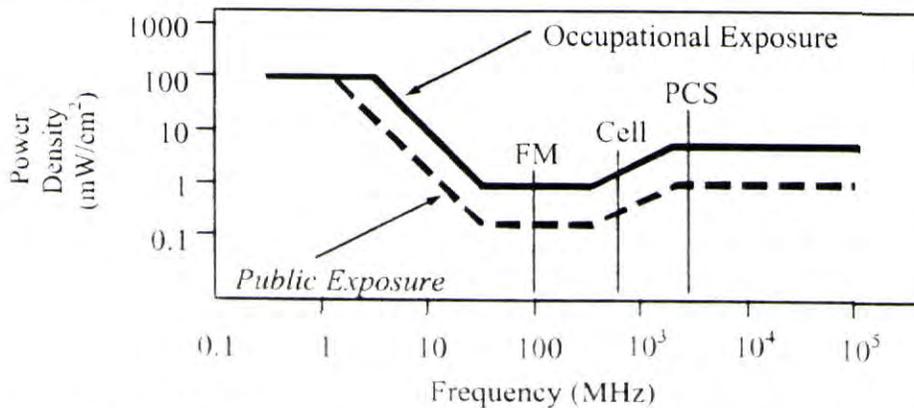
June 16, 2011

## FCC Radio Frequency Protection Guide

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission ("FCC") to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The FCC adopted the limits from Report No. 86, "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," published in 1986 by the Congressionally chartered National Council on Radiation Protection and Measurements ("NCRP"). Separate limits apply for occupational and public exposure conditions, with the latter limits generally five times more restrictive. The more recent standard, developed by the Institute of Electrical and Electronics Engineers and approved as American National Standard ANSI/IEEE C95.1-2006, "Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," includes similar limits. These limits apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

As shown in the table and chart below, separate limits apply for occupational and public exposure conditions, with the latter limits (in *italics* and/or dashed) up to five times more restrictive:

Frequency Applicable Range (MHz)	Electromagnetic Fields ( <i>f</i> is frequency of emission in MHz)					
	Electric Field Strength (V/m)		Magnetic Field Strength (A/m)		Equivalent Far-Field Power Density (mW/cm <sup>2</sup> )	
0.3 – 1.34	614	<i>614</i>	1.63	<i>1.63</i>	100	<i>100</i>
1.34 – 3.0	614	<i>823.8/f</i>	1.63	<i>2.19/f</i>	100	<i>180/f<sup>2</sup></i>
3.0 – 30	1842/f	<i>823.8/f</i>	4.89/f	<i>2.19/f</i>	900/f <sup>2</sup>	<i>180/f<sup>2</sup></i>
30 – 300	61.4	<i>27.5</i>	0.163	<i>0.0729</i>	1.0	<i>0.2</i>
300 – 1,500	3.54√ <i>f</i>	<i>1.59√f</i>	√ <i>f</i> /106	<i>√f/238</i>	f/300	<i>f/1500</i>
1,500 – 100,000	137	<i>61.4</i>	0.364	<i>0.163</i>	5.0	<i>1.0</i>



Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits, and higher levels also are allowed for exposures to small areas, such that the spatially averaged levels do not exceed the limits. However, neither of these allowances is incorporated in the conservative calculation formulas in the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) for projecting field levels. Hammett & Edison has built those formulas into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radio sources. The program allows for the description of buildings and uneven terrain, if required to obtain more accurate projections.

**Assessment by Calculation of Compliance with FCC Exposure Guidelines**

The U.S. Congress required (1996 Telecom Act) the Federal Communications Commission (“FCC”) to adopt a nationwide human exposure standard to ensure that its licensees do not, cumulatively, have a significant impact on the environment. The maximum permissible exposure limits adopted by the FCC (see Figure 1) apply for continuous exposures from all sources and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health. Higher levels are allowed for short periods of time, such that total exposure levels averaged over six or thirty minutes, for occupational or public settings, respectively, do not exceed the limits.

**Near Field.**

Prediction methods have been developed for the near field zone of panel (directional) and whip (omnidirectional) antennas, typical at wireless telecommunications base stations, as well as dish (aperture) antennas, typically used for microwave links. The antenna patterns are not fully formed in the near field at these antennas, and the FCC Office of Engineering and Technology Bulletin No. 65 (August 1997) gives suitable formulas for calculating power density within such zones.

For a panel or whip antenna, power density  $S = \frac{180}{\theta_{BW}} \times \frac{0.1 \times P_{net}}{\pi \times D \times h}$ , in mW/cm<sup>2</sup>,

and for an aperture antenna, maximum power density  $S_{max} = \frac{0.1 \times 16 \times \eta \times P_{net}}{\pi \times h^2}$ , in mW/cm<sup>2</sup>,

- where  $\theta_{BW}$  = half-power beamwidth of the antenna, in degrees, and
- $P_{net}$  = net power input to the antenna, in watts,
- $D$  = distance from antenna, in meters,
- $h$  = aperture height of the antenna, in meters, and
- $\eta$  = aperture efficiency (unitless, typically 0.5-0.8).

The factor of 0.1 in the numerators converts to the desired units of power density.

**Far Field.**

OET-65 gives this formula for calculating power density in the far field of an individual RF source:

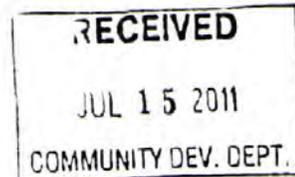
power density  $S = \frac{2.56 \times 1.64 \times 100 \times RFF^2 \times ERP}{4 \times \pi \times D^2}$ , in mW/cm<sup>2</sup>,

- where ERP = total ERP (all polarizations), in kilowatts,
- RFF = relative field factor at the direction to the actual point of calculation, and
- $D$  = distance from the center of radiation to the point of calculation, in meters.

The factor of 2.56 accounts for the increase in power density due to ground reflection, assuming a reflection coefficient of 1.6 (1.6 x 1.6 = 2.56). The factor of 1.64 is the gain of a half-wave dipole relative to an isotropic radiator. The factor of 100 in the numerator converts to the desired units of power density. This formula has been built into a proprietary program that calculates, at each location on an arbitrary rectangular grid, the total expected power density from any number of individual radiation sources. The program also allows for the description of uneven terrain in the vicinity, to obtain more accurate projections.

7/15/2011

Alternative Site Analysis  
Site No. 248124  
814 Carter Acres Lane  
Martinez, CA 94553



**Coverage Objective:**

This site is considered a coverage site which means it will provide Verizon Wireless coverage to a surrounding area that currently has no or poor cell coverage..

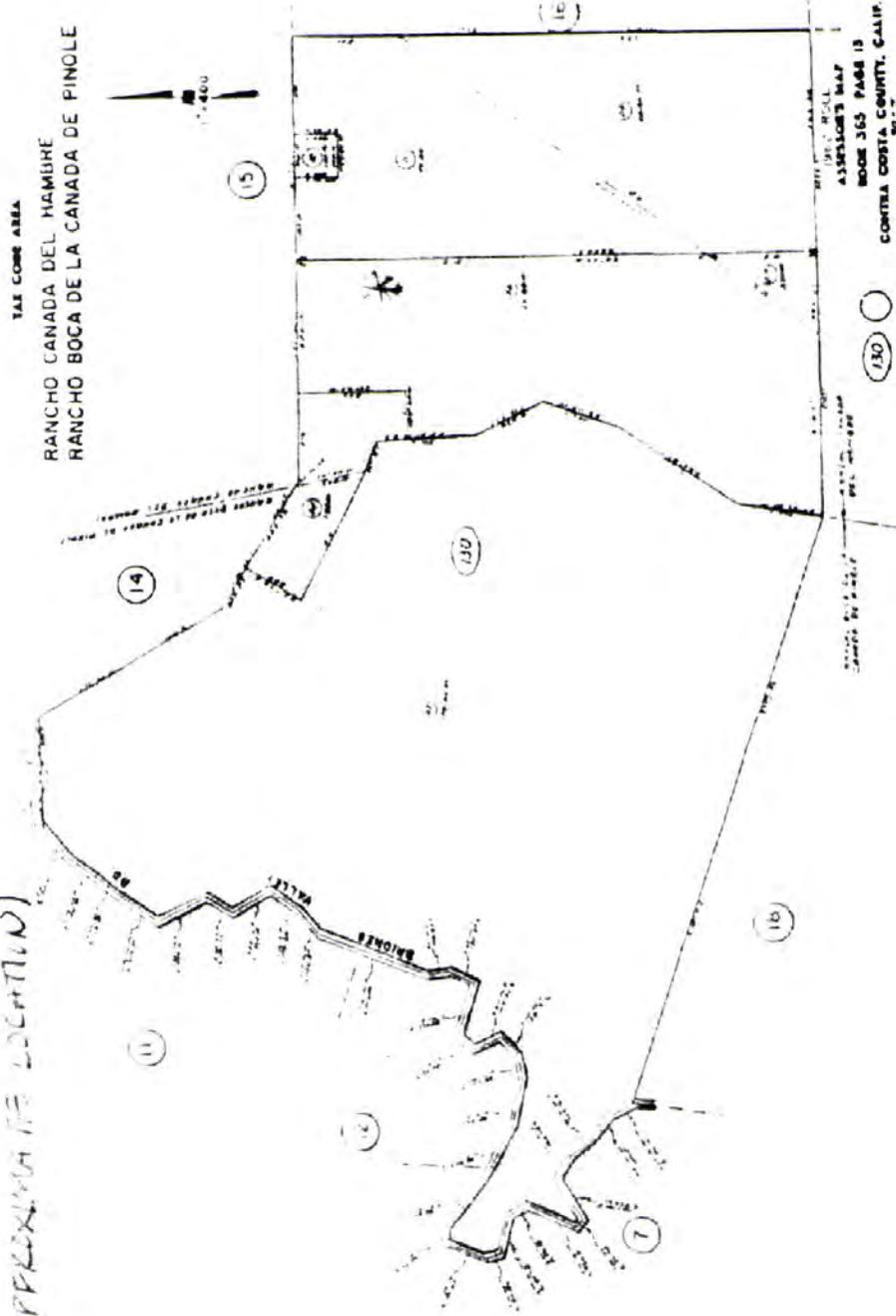
Faced with the continued demand and utilization of wireless communications services, Verizon Wireless is working to improve network coverage to effectively meet the needs and expectations of its customer base. The proposed facility is necessary to provide adequate wireless service to local area residents, commuters, and professionals in the area. The lack of coverage presents an issue of concern in the event of an emergency when call volume is highest. In the case of accidents, fires, seismic events or other disasters, adequate coverage is needed to handle call volume on the network. Without it calls cannot be made or received, a serious issue for public safety in the event of an emergency.

1. **PG&E tower adjacent to the west of the proposed tower along the same line. This tower is located on unimproved land owned by East Bay Regional Park District within Briones Park. This tower was looked at because it was the only other co-locatable facility in the search ring that provided adequate coverage. VZW was unable to gain access to the tower and it was therefore eliminated. See attached map for approximate location.**

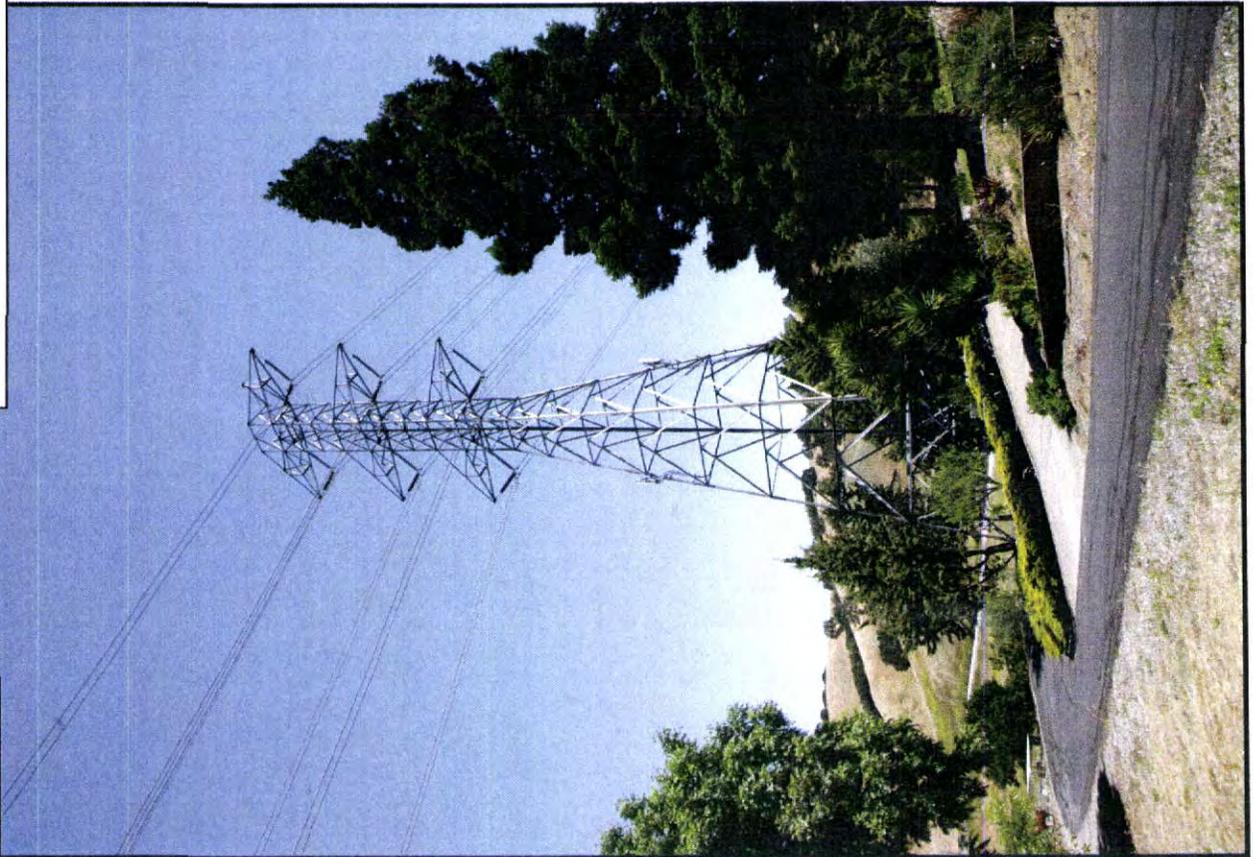
There were no other viable alternative sites without the need for a monopole.

# ALTERNATIVE SITE

ALTERNATIVE TOWER SITE  
LOCATION (APPROXIMATE LOCATION)



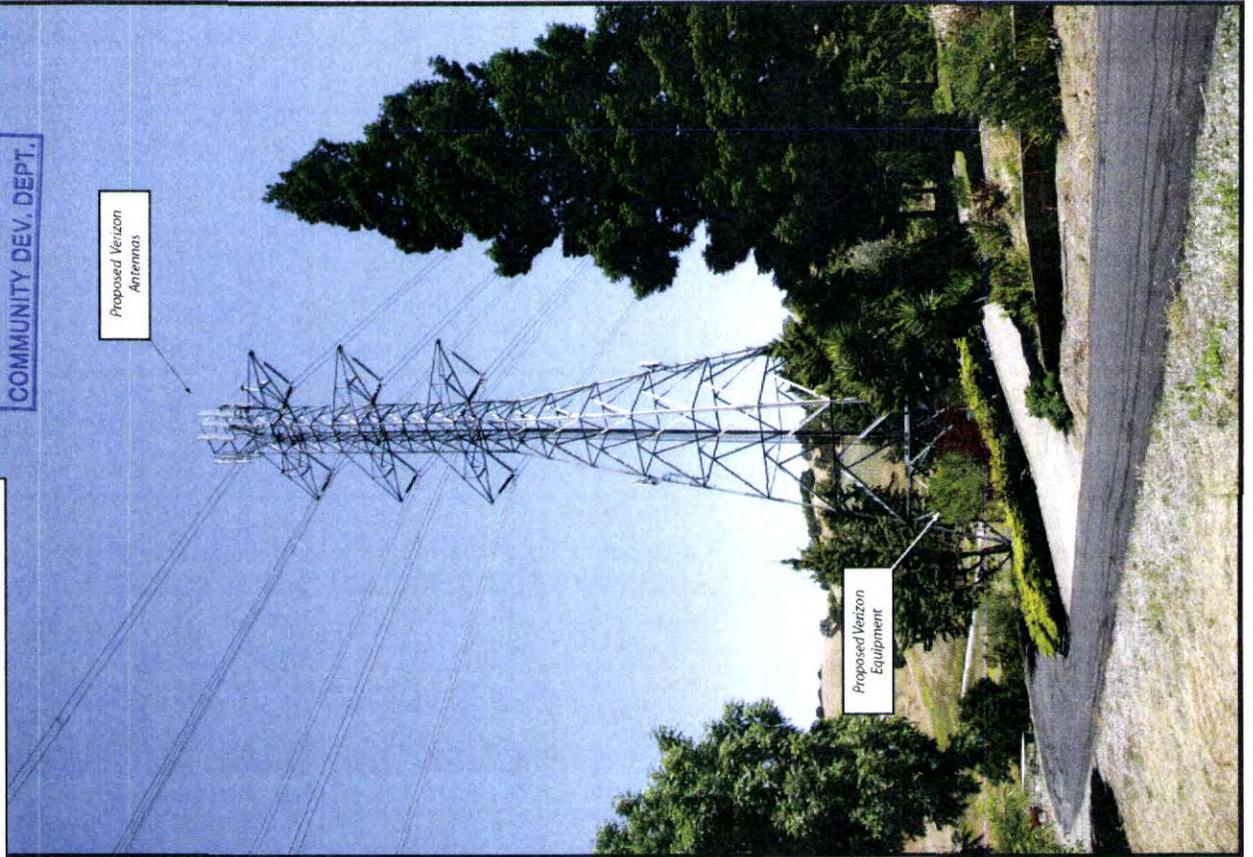
Existing



view from Carter Acres Road looking northeast at site  
2481 24 Alhambra Reliez  
814 Carter Acres Road, Martinez, CA



Proposed



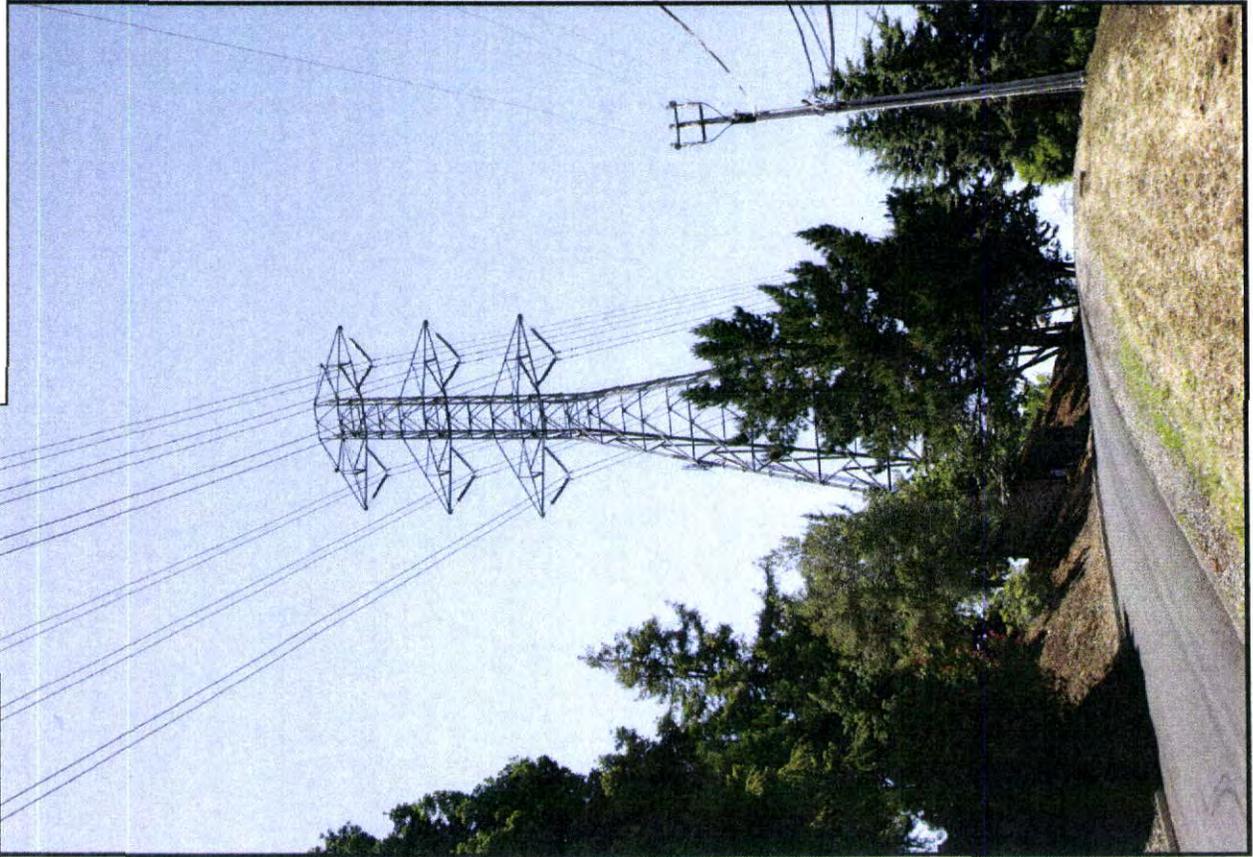
Proposed Verizon Antennas

Proposed Verizon Equipment

RECEIVED  
MAR 10 2012

COMMUNITY DEV. DEPT.

Existing



view from Carter Acres Road looking southwest at site  
248124 Alhambra Reliez  
814 Carter Acres Road, Martinez, CA

RECEIVED

MAR 16 2012

Proposed

COMMUNITY DEV. DEPT.



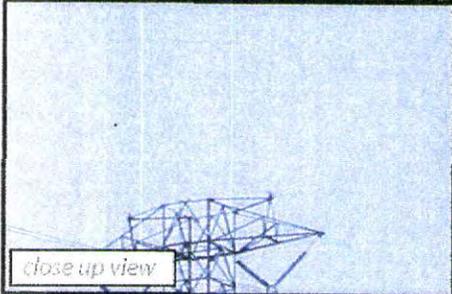
Proposed Verizon Antennas

Proposed Verizon Equipment

Existing

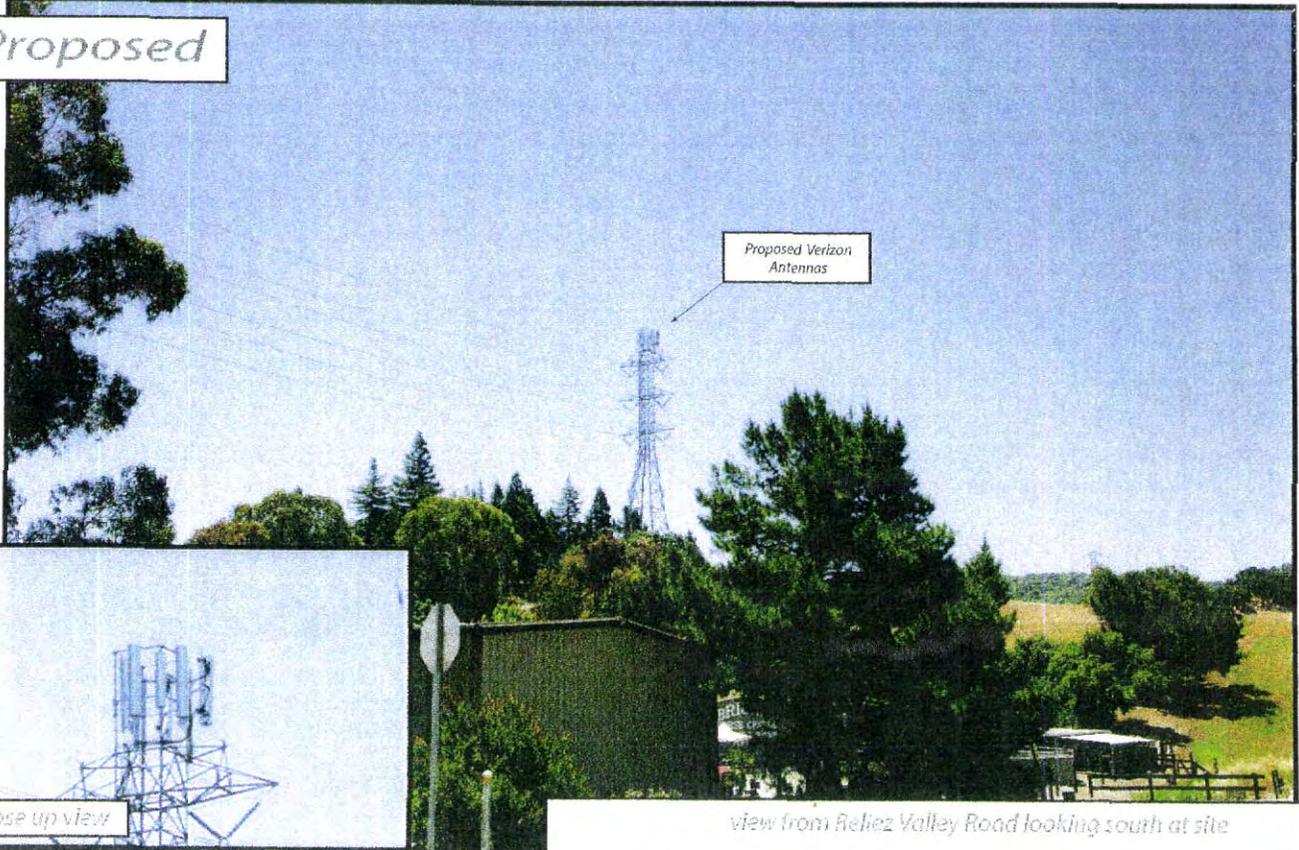


**RECEIVED**  
 JUL 15 2011  
 COMMUNITY DEV. DEPT.

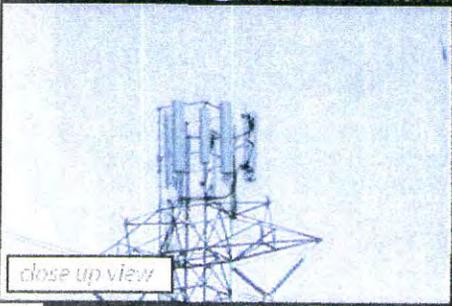


close up view

Proposed



Proposed Verizon Antennas



close up view

view from Beliez Valley Road looking south at site



245124 Alhambra Peliez  
 511 Co. Garces Road, Martinez, CA



# NOTICE OF PUBLIC HEARING

The Martinez Planning Commission will hold a Public Hearing to discuss the following application:

- LOCATION:** PG&E Tower at 814 Carter Acres Lane (APN 365-150-053)
- APPLICANT:** Verizon Wireless/Ridge Communications, Inc. - Clarence Chavis
- OWNER:** Michael and Norma Hansen
- ZONING DESIGNATION:** Residential: R-80 (One-Family Residential: 80,000 sq. ft. minimum lot area) / ECD (Environmental Conservation District)
- DESCRIPTION:** Public hearing to consider a proposal for an installation of a new co-located wireless telecommunications facility on an existing PG&E tower located on a private residential lot. The proposed project consists of adding a 12' lattice structure, with 9 antennas, on top of the existing approximately 162' tall tower. Verizon will be leasing an approximately 473 sq. ft. area within the tower footprint for an equipment enclosure. The proposed project is located in a residential zoning district, which requires a Use Permit and Design Review.
- PROPOSED ENVIRONMENTAL DETERMINATION:** Staff proposes that the Planning Commission find that this permit be categorically exempt (Class I - Section 15301 - Existing Facilities and Class 11 - Section 15311 - Accessory Structures) from the requirements of CEQA. If the Planning Commission adopts this proposed finding, no further environmental review would be required by State law.

**The Public Hearing will be held during the following meeting:**

<b>DATE:</b>	Tuesday, April 24, 2012
<b>TIME:</b>	7:00 p.m.
<b>PLACE:</b>	City Hall Council Chambers 525 Henrietta Street Martinez, Ca 94553 [925] 372-3515

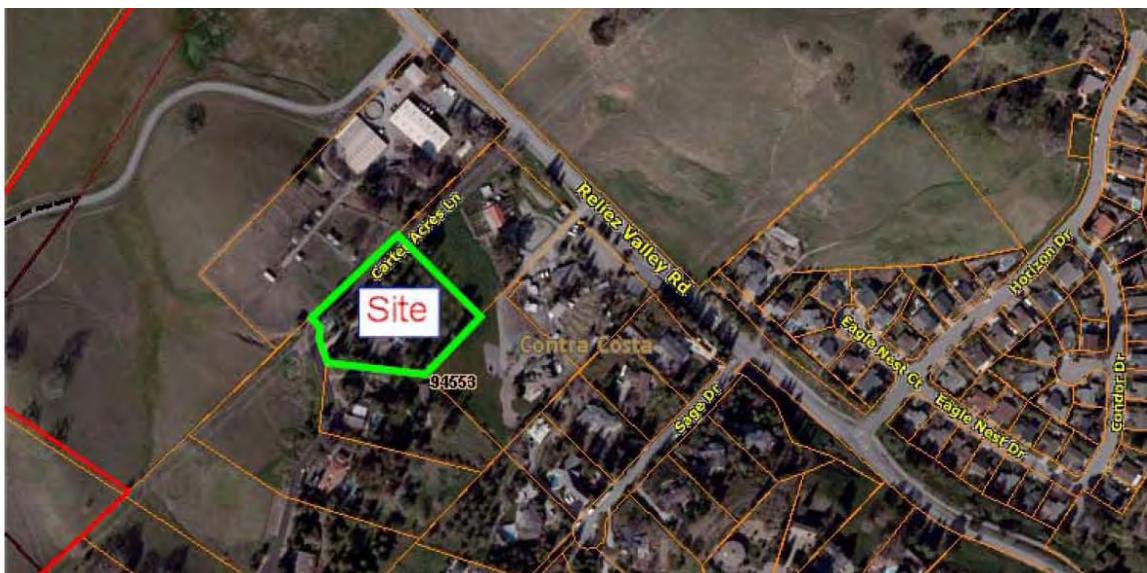
If you are interested in this application, you may come to the Public Hearing. Anyone may speak about the application at that time. If you cannot come to the hearing, you may send your comments in a letter addressed to the Planning Commission at the above address.

If you need further information, the application may be reviewed at the Planning Division at City Hall, which is open from 8:00 a.m. to 12 noon and from 1:00 p.m. to 5:00 p.m.

**PLEASE REVIEW IMPORTANT INFORMATION PRINTED ON THE REVERSE OF THIS FORM.**

Date Notice Mailed: April 13, 2012

F:\Community Development\All Projects\Wireless Facilities\Carter Acres Lane, 814 - Verizon\Verizon Wireless - PC\_PHNotice 4\_24\_12.doc



## **PUBLIC HEARING PROCEDURE**

1. Staff presents its report and recommendation.
2. Public Hearing:
  - a. Applicant's presentation.
  - b. Persons in favor of proposal may speak.
  - c. Persons opposed to proposal may speak.
  - d. Applicant may present rebuttal.
3. Planning Commission takes action.

## **APPEALS**

Most Planning Commission decisions are appealable to the City Council within 10 (ten) calendar days of the decision. Please contact Planning staff for further information immediately after the decision. If a decision is appealed, the City Council will hold another hearing and make a decision.

## **COURT REVIEW**

If you challenge a City decision in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, either in oral testimony at the hearing or in written correspondence delivered to the Planning Commission at or prior to the Public Hearing.

CITY OF MARTINEZ  
PLANNING DIVISION  
525 HENRIETTA STREET  
MARTINEZ, CA 94553

**NOTICE OF PUBLIC HEARING**

**RESOLUTION NO. PC 12-01**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF MARTINEZ  
MAKING FINDINGS FOR THE APPROVAL OF USE PERMIT AND DESIGN REVIEW  
APPLICATION PERMIT #12PLN-0002, FOR A NEW VERIZON WIRELESS  
TELECOMMUNICATION FACILITY ON A PG&E TOWER AND EQUIPMENT IN A LEASED  
AREA WITHIN THE TOWER FOOTPRINT AT 814 CARTER ACRES LANE  
(APN 365-150-053)**

**WHEREAS**, the City of Martinez received a request for a Use Permit and Design Review from Verizon Wireless to allow construction of a new co-located wireless telecommunication facility on an existing PG&E tower and equipment in a leased area within the tower footprint ("Project") at 814 Carter Acres Lane, identified as APN 365-150-053 ("Project Lot", "Project site" or "site"), within the City of Martinez; and

**WHEREAS**, the policies applicable to the project site are set forth in the General Plan with the land use designation of CUL: Open Space/Conservation Use Land; and

**WHEREAS**, the zoning applicable to the site is Residential: R-80 (One-Family Residential: 80,000 sq. ft. minimum lot area) / ECD (Environmental Conservation District) as set forth in the Martinez Municipal Code, at Title 22-Zoning, and Chapter 22.12-Residential Districts (Zoning Ordinance) which allows for wireless telecommunication facilities with a conditional use permit and design review permit; and

**WHEREAS**, Chapter 22.39 Wireless Telecommunications Facilities - Section 22.39.050(3) requires Use Permit and Design Review approval by the Planning Commission to permit a wireless telecommunication facility; and

**WHEREAS**, the Project is categorically exempt from the requirements of CEQA, under Section 15301-Existing Facilities and Section 15311-Accessory Structures, because the Project consists of construction that is appurtenant to the existing PG&E facility; and

**WHEREAS**, the Planning Commission of the City of Martinez held a duly noticed public hearing on April 24, 2012, and considered public testimony on the matter and all other substantial evidence in the record; and

**WHEREAS**, the Planning Commission as part of its public hearing imposed certain Conditions of Approval on the Project for the Use Permit and Design Review which are required for the Project and incorporated into this Resolution; and

**NOW, THEREFORE**, the Planning Commission of the City of Martinez resolves as follows:

1. That the above recitals are found to be true and constitute part of the findings upon which this resolution is based.

2. In order to approve the Use Permit application, the Planning Commission must make the following findings (in bold below), which it hereby does:

- (a) **The proposed location of the conditional use is in accord with the objectives of this title, and the purposes of the district in which the site is located.** The proposed wireless telecommunication facility is appropriate for the residential project site because of the existing PG&E tower with the other wireless carrier that is already located there. Co-location of wireless telecommunication facilities is promoted to condense the number of sites with such facilities.
- (b) **The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity.** The Project will be a co-located facility, which is promoted by the "Wireless Telecommunications Facilities" ordinance (MMC Chapter 22.39), to reduce the amount of wireless facility sites in the City. Also, in order to be located in a residential area, Verizon Wireless has demonstrated that no other feasible alternative site exists. The equipment for the wireless telecommunication facility will be fenced and secured. The equipment will make minimal noise and will require maintenance twice monthly, not significantly increasing traffic activity at the site. Thus, the Project as proposed will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.
- (c) **The proposed conditional use will comply with each of the applicable provisions of this title.** The Project complies with each of the applicable provisions of Title 22-Zoning of the Martinez Municipal Code, including the standards and criteria for telecommunication facilities. In addition, the project meets the Federal Communications Commission (FCC) requirements for levels of Radio Frequency Radiation.

3. In order to approve the Design Review application, the Planning Commission must make the following findings (in bold below), which it hereby does.

- a) **Complying with all other applicable provisions of the Martinez Municipal Code involving the physical development of buildings, structures and property, including use restrictions.** The proposed wireless telecommunication facility complies with all other applicable provisions of the Martinez Municipal Code and is also consistent with the design review criteria and standards.
- (b) **Provides desirable surroundings for occupants as well as for neighbors. Emphasis is placed upon exterior design with regard to**

**height, bulk, and area openings; breaks in the facade facing on a public or private street; line and pitch of the roof; and arrangement of structures on the parcel.** The Project would be a co-located facility, which is promoted by the "Wireless Telecommunications Facilities" ordinance (MMC Chapter 22.39) to reduce the amount of wireless facility sites in the City. Also, in order to be located in a residential area, Verizon Wireless has demonstrated that no other feasible alternative site exists. Verizon Wireless has designed the top hat to look similar to the PG&E tower and will paint the top hat, antennas, and brackets the match the tower. The equipment will comply with all FCC regulations and will be serviced twice monthly, which will not have a significant impact on traffic and activity at the site. The telecommunication site will only create a negligible amount of noise and will give off no fumes or odors.

- (c) **Has a harmonious relationship with existing and proposed neighboring developments avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted.** The Project will fit in with the site since it is similar to the other wireless facility at the site and the top hat, antennas, and brackets will resemble the PG&E towers materials and colors, allowing similarity of style. In addition, the proposed wireless facility will not exceed noise levels as required by the City's Noise Ordinance and will be in compliance with all FCC radio frequency regulations.
- (d) **Uses a limited palette of exterior colors; those colors must be harmonious and architecturally compatible with their surrounding environment.** Verizon Wireless will paint the top hat, antennas, and brackets to match the existing PG&E tower. The wooden fence surrounding the equipment enclosure will have a stain to blend in with the base and footprint of the utility tower.
- (e) **Uses a limited number of materials on the exterior face of the building or structure. In addition, all interior surfaces normally visible from public property shall be finished.** A limited number of exterior materials will be used since Verizon Wireless will use materials that are similar to and resemble the PG&E tower for the 12' top hat lattice structure. The fence surrounding the equipment enclosure at the base of the tower will be made of wood.
- (f) **Has exterior lighting appropriately designed with respect to convenience, safety, and effect on occupants as well as neighbors.** This standard is not applicable to the Project since no exterior lighting is proposed.
- (g) **Effectively concealing work areas, both inside and outside of buildings, in the case of non-residential facilities.** The equipment cabinets will be concealed by the wooden fence at the towers base.

- (h) **Under grounding all utility boxes unless it can be shown that they can be effectively screened from the view of the general public.** The utility boxes in the equipment enclosure will be screened from view of the general public by the wooden fence.
- (i) **Designing the type and location of planting with respect to the preservation of specimen and landmark trees, water conservation as set forth in Chapter 22.35, and maintenance of all planting.** This standard is not applicable to the Project.
- (j) **Establishing a circulation pattern, parking layout and points of ingress and egress (both vehicular and pedestrian), designed to maximize pedestrian safety and convenience and to minimize traffic congestion resulting from the impediment of vehicular movement. When applicable, access for handicapped individuals should be considered.** This standard is not applicable to the Project.
- (k) **Ensuring that all signs be designed so that they are in scale with the subject development, and will not create a traffic hazard. Emphasis is placed upon the identification of the use or building rather than the advertising of same.** This standard is not applicable to the Project.
- (l) **Substantially preserves views from nearby properties where this can be done without severe or undue restrictions on the use of the site, balancing the property rights of the applicant and the affected property owner(s).** Given that the top hat will be designed to resemble the existing PG&E tower; the top hat, antennas, and brackets materials and paint will match the existing tower; the overall height of the tower will increase approximately twelve feet; and the equipment enclosure will be located at the base and within the footprint of the tower, the Project will not result in any significant view loss.

**NOW, BE IT FURTHER RESOLVED** that based on the information contained in the entire administrative record and the findings set forth above, the Planning Commission of the City of Martinez hereby approves Use Permit and Design Review application Permit #12PLN-0002, subject to the Conditions of Approval, incorporated herein by reference.

\*\*\*\*\*

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a Regular Meeting of said Commission held on the 24<sup>th</sup> day of April, 2012, by the following vote:

AYES: Allen, Burt, Ford, Glover, Keller & Waggener

NOES:

ABSTAINED: Kelly

BY: A. Mepani  
Anjana Mepani  
Associate Planner/Clerk Pro Tem

F:\Community Development\All Projects\Wireless Facilities\Carter Acres Lane, 814 - Verizon\Verizon Wireless - PCResolution.doc