



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
September 19, 2012**

TO: Mayor and City Council
FROM: Anjana Mepani, Associate Planner
SUBJECT: Continued Public hearing on an Appeal to Approve Use Permit and Design Review Application Permit #12PLN-0002, by Verizon Wireless
DATE: September 14, 2012

RECOMMENDATION:

Hold a continued 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:

SUPPLEMENTAL INFORMATION REQUESTED BY CITY COUNCIL

On July 11, 2012 and July 25, 2012, the City Council continued the public hearing and requested additional information. The City Council requested that alternatives sites and additional sites for the proposed wireless facility be reevaluated, reviewed and analyzed. Verizon Wireless conducted the evaluation and review. Further, the City engaged RCC Consultants, Inc. to conduct an independent engineering review of the Verizon Wireless analysis. The conclusions of the revised analysis and the peer review are provided below. Also below is correspondence East Bay Regional Park District in regards to locating the proposed facility at Briones Regional Park and correspondence from PG&E in regards to screening/stealth of antennas on PG&E towers.

- Revised Alternatives Analysis: Conducted by Verizon Wireless (Attachment #1)
 - *“Conclusion: Verizon Wireless evaluated all existing public facility structures within the Coverage Gap. In this supplemental Alternatives Analysis, Verizon Wireless further investigated six additional alternatives including government facility zoned parcels, public facility collocations, public facilities in the general vicinity of the Approved Facility and a right-of-way facility. Based on the foregoing analysis, as supplemented by propagation maps and correspondence from landowners, Verizon Wireless continues to believe that the Approved Facility, which provides for collocation of antennas on an existing public utility tower that already hosts another carrier’s antennas, fully complies with the Code and*

Standards, and is the least intrusive and feasible means to fill the identified gap in Verizon Wireless's service.” (Page 28 of Attachment #1)

- Wireless Facility Engineering Review: Conducted by RCC Consultants, Inc. (Attachment #2)
 - *“Summary & Conclusion: RCC Consultants, Inc. is of the opinion that:*
 - *Based on the coverage prediction maps, drive data and network incident data provided, Verizon has demonstrated a gap in in-transit and in-building coverage in the subject area which would be substantially mitigated by implementation of equipment at the proposed site.*
 - *The proposed design is considered reasonable and consistent with industry best practices to fill coverage gaps in areas similar to the subject target area.*
 - *The proposed site is the most viable of the listed alternatives to mitigate the identified coverage gap. Alternative Sites 2 and 8 would require construction of an additional site in the northwest portion of the identified coverage gap.*
 - *The proposed installation will meet Federal Communications Commission guidelines pertaining to radio frequency emissions exposure to the general public.” (Page 7 of Attachment #2)*

- East Bay Regional Park District (EBRPD) and Mitigation (e.g., shield): Correspondence included in Attachment #1
 - From EBRPD

“I have received feedback on your Verizon cell site proposal from some of the park managers for the area in question. At this time, they believe this site proposal would have a negative impact to the quality of the recreational experience the District is trying to provide. The Operations Revenue Manager will discuss this proposal with other District managers in the next month or so but it is not likely that it would be approved since the Operations managers are not behind the project. I cannot give you any timeline for this review process, it could take many months to a year for review. If you have any further questions, please let me know. Renee Patterson Administrative Analyst II | Operations Administration” (Page 12 of Attachment #1)

 - From PG&E

“Per our conversation; PG&E will not allow any attachments, to its tower(s) that are not directly related to the receiving and transmitting of the carriers' wireless network. Such attachments would include any sort of “screening” for both RF or for any sort of “stealthing”. This is to reduce the overall amount of equipment and loading necessary to accommodate the site. Regards, Eric Jacobson Manager, Wireless Account Services” (Page 7 of Attachment #1)

ADOPTING STANDARDS AND CRITERIA FOR TELECOMMUNICATION FACILITIES
RESOLUTION NO. 071-01:

The City of Martinez Adopting Standards and Criteria for Telecommunications Facilities Resolution 071-01 (Attachment #3), Section III provides general standards for the location of telecommunication facilities. Section III of the Resolution is provided below for information on where wireless facilities can be located in the City.

Location of Telecommunication Facilities - General Standards

III. All wireless telecommunications facilities shall be sited to avoid or minimize land use conflicts by meeting the following standards.

A. No telecommunications facility shall be sited in a location where it will unreasonably interfere with the operation of Buchanan Field Airport and/or City utilities.

B. Location preference for telecommunication facilities should be given to publicly used structures, co-location and shared-location sites, and industrial or commercial sites. With the exception of co-locating on existing power poles, as indicated in Section III.D, below, telecommunication facilities shall not be permitted on Residential properties and on sites designated as visually significant in the Martinez General Plan. Applications for new telecommunications facilities should avoid sites located near residential areas unless the applications include information sufficient to demonstrate: the location and type of preferred sites which exist within the proposed or technically feasible coverage read; that good faith efforts and measures were taken by the applicant to secure such preferred location sites; specific reasons why such efforts and measures were unsuccessful; specific reasons why the location of the proposed facility site is essential to meet the service demands of the carrier. The information required by this standard may be incorporated into the information required by Section IV (A) below.

C. Telecommunication facilities shall be attached, sited adjacent to existing structures or sited on existing poles unless the applicant demonstrates to the satisfaction of the City that no other technically feasible site exists or that construction of a freestanding facility on or at a distant location from an existing structure will minimize adverse effects related to land use compatibility, visual resources, public safety, and other environmental factors addressed by CEQA. Appropriate types of existing structures may include, but not be limited to: buildings, water tanks, telephone and utility poles, signage and sign standards, traffic signals, light standards, and roadway overpasses.

D. Telecommunication facilities, especially monopoles shall not be located in residential, agricultural, visually significant or designated open space and conservation areas, except where antennas can be attached to existing power poles/towers and other existing public utility structures and where ground mounted equipment is located within the envelope created by the "legs" of the existing tower and no other feasible alternative exists.

47 UNITED STATES CODE ANNOTATED SECTION 332, MOBILE SERVICES:

The Telecommunications Act of 1996, Section 332 Mobile services (Attachment #4), preserves local authority over zoning and land use decisions for personal wireless service facilities, but sets forth specific limitations on that authority. Section 332(c)(7) of the Act is provided below for information on limitations that affect the City in decisions on wireless facilities.

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph--

(i) the term "personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services; and

(iii) the term "unlicensed wireless service" means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) of this title).

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) Revised Alternatives Analysis
- 2) Wireless Facility Engineering Review by RCC Consultants, Inc.
- 3) Adopting Standards and Criteria for Telecommunications Facilities Resolution 071-01
- 4) 47 United States Code Annotated Section 332, Mobile Services
- 5) Resolution and Conditions of Approval
- 6) Correspondence from Verizon
- 7) Staff Report from July 11, 2012 (without attachments)

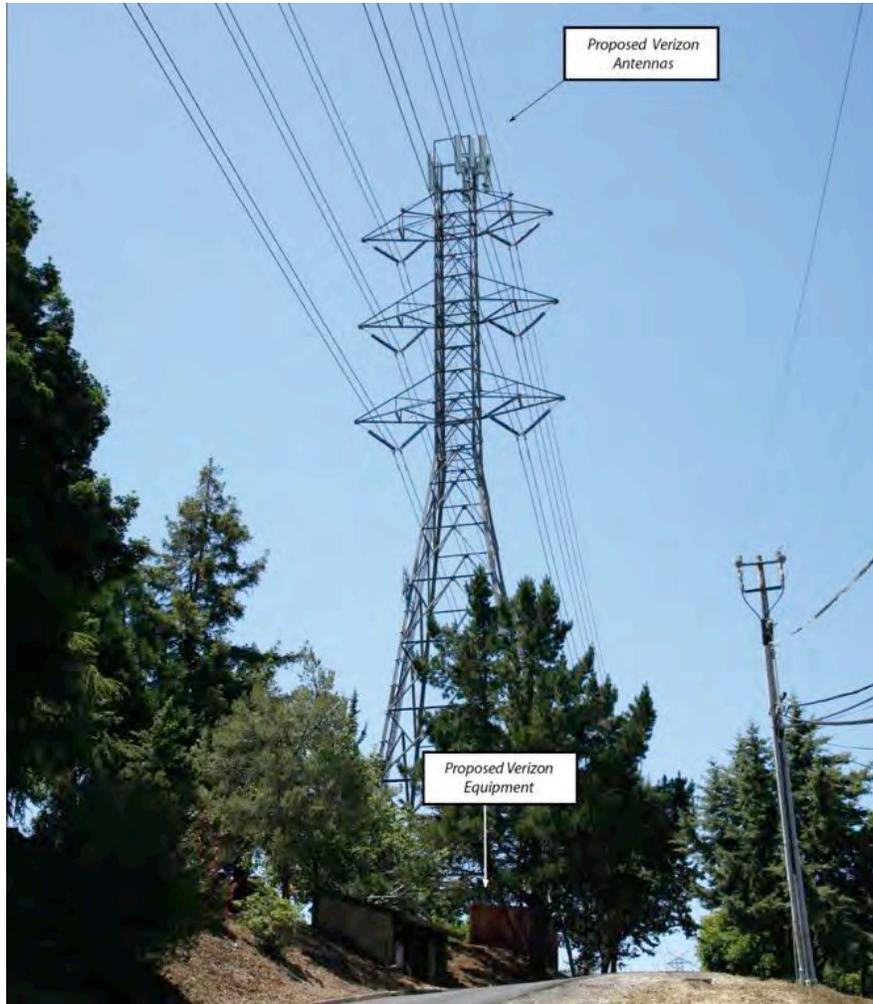
APPROVED BY:



City Manager

Alternatives Analysis

**Verizon Wireless
Alhambra Reliez
814 Carter Acres Lane, Martinez
APN 365-150-053**



**August 16, 2012
REVISED**

**Summary of Site Evaluations
Conducted by Ridge Communications, Inc.**

Compiled by Mackenzie & Albritton LLP

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Map of Alternatives

- Exhibit A: Statement of Verizon Wireless Radio Frequency Design Engineer
Stefano Iachella
- Exhibit B: Contra Costa County Private Rural Road Design Standards

I. Executive Summary

Verizon Wireless has identified a gap in coverage in the southwest portion of Martinez in the vicinity of the intersection of Alhambra Valley Road and Reliez Valley Road and areas south. The gap includes a one mile stretch of Alhambra Valley Road and a one and one-half mile stretch of Reliez Valley Road, as well as the residential, open space and recreational areas surrounding these important roadways. Based on an extensive review of available sites as set forth in the following analysis, Verizon Wireless believes the proposed collocation of antennas on an existing PG&E transmission tower (the “Approved Facility”) constitutes the least intrusive alternative for providing Verizon Wireless service to the identified coverage gap based on the values expressed in the Martinez Code of Ordinances (the “Code”) and Standards and Criteria for Telecommunications Facilities (the “Standards”).

As a result of direction provided by the Martinez City Council on July 11, 2012, Verizon Wireless has reevaluated alternatives previously proposed in its Alternatives Analysis dated June 29, 2012 and has supplemented this analysis with six additional alternative site locations to reflect sites previously reviewed by Verizon Wireless and not included in the prior analysis as well as sites specifically identified by the City Council. Notably, new correspondence was received from the landowners for adjacent PG&E transmission towers to the east and west of the Approved Facility that confirms that those towers are not available to Verizon Wireless. As set forth below, the additional analysis conducted by Verizon Wireless confirms that the Approved Facility remains the least intrusive feasible alternative to provide wireless service to the identified coverage gap.

II. Coverage Gap

Verizon Wireless Performance Engineers have identified a gap in coverage in the southernmost area of the City of Martinez. The gap area includes all residences in Martinez south of Golden Hills Park along with Reliez Valley Road, which, in this area, serves approximately 150 cars per hour in each direction during the day.¹ This road also hosts a well-used Class 1 bike path. In addition to these significant portions of Martinez, the gap also includes the Meadowbrook Golf Club and the northern portion of Briones Regional Park, including the Park Office, where cellular is the only emergency means of communication. (Collectively, the “Coverage Gap”) The Approved Facility will address these significant gaps in service and provide new wireless access to this area of Martinez. The Coverage Gap is more fully described in the Statement of Verizon Wireless Radio Frequency Design Engineer Stefano Iachella dated June 29, 2012 attached as Exhibit A for ease of reference.²

¹ 2003 Traffic Study. <http://www.co.contra-costa.ca.us/depart/cd/current/AlhambraValley/05Ch3-12%20Transportation.pdf>

² The RF statement attached to this alternatives analysis contains graphics modified to be consistent with the graphic contained in this alternatives analysis.

III. Methodology

Once a coverage gap has been determined, Verizon Wireless seeks to identify a proposal that will provide coverage through the “least intrusive means” based upon the values expressed by local regulation. In addition to seeking the “least intrusive” alternative, sites proposed by Verizon Wireless must be feasible. In this regard, Verizon Wireless reviews the topography, radio frequency propagation, elevation, height, available electrical and telephone utilities, access, and other critical factors such as a willing landlord in completing its site analysis. Wherever feasible, Verizon Wireless seeks to identify collocation opportunities that allow placement of wireless facilities with minimal impacts.

While the Code provides for administrative and zoning administrator review of applications for wireless telecommunications facilities (“WTFs”) in commercial, industrial, professional or governmental facilities zoning districts, it also provides for the placement of WTFs in residential zones with a use permit and design review approved by the Planning Commission where the site complies with the Standards. (Code § 223.39.050(3)) Consistent with the Code, the Standards establish a preference for facilities in commercial and industrial zones. In addition, the Standards establish a location preference for facilities that are located on publicly-used structures, collocation and shared location sites. For facilities located in residential, agricultural, visually significant or designated open space and conservation areas, the Standards require WTFs to be “attached to existing power poles/towers and other existing public utility structures and where ground mounted equipment is located within the envelope created by the ‘legs’ of the existing tower”. (Standards § III.D)

In order to locate its facility in the least intrusive means possible based on the values expressed in the Code and Standards, Verizon Wireless reviewed the Coverage Gap area and confirmed that there are no industrial, commercial, professional or governmentally zoned parcels in the Coverage Gap for the placement of its facility. While our previous Alternatives Analysis referenced the nearest government facility zoned sites, noting that these locations were far outside the Coverage Gap, this supplemental Alternatives Analysis specifically addresses those sites in Section V below. Verizon Wireless’s analysis further confirmed that the Coverage Gap is entirely comprised of residential, open space and recreational facility zoned parcels. Given the requirements for residential and open space parcels under the Code and Standards, Verizon Wireless then looked to available structures, power poles, towers and public utility structures. In so doing, Verizon Wireless investigated collocation opportunities on existing public utility structures. Verizon Wireless did not investigate the placement of monopoles for a new cell tower in the open space and residential parcels of the Coverage Gap as this would be contrary to the Code and Standards.

In order to address the requests of the City Council, Verizon Wireless has supplemented this Alternatives Analysis with a review of government facility zoned sites, public facilities and a right-of-way alternative within the vicinity of the Approved Facility. This supplemental review appears in Section V below.

IV. Analysis

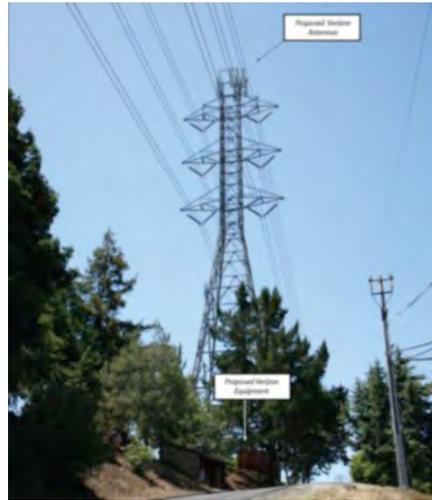
As noted, Verizon Wireless did not locate any commercial, industrial, professional or government facilities zoned parcels that would provide service to the Coverage Gap. New correspondence received from the landowners for adjacent PG&E transmission towers to the east and west of the Approved Facility confirm that those towers are not available to Verizon Wireless. In response to the City Council request, the nearest government facility zoned parcels are reviewed in Section V below. In its initial Alternatives Analysis, Verizon Wireless identified two collocation opportunities where public facilities support existing antennas and these alternatives are supplemented below. In addition, Section V reviews a public facility (a collocated water tank) located outside of the City of Martinez. Two additional public utility structures were identified which do not host existing communications facilities and these alternatives are supplemented below. In addition, Section V reviews two additional non-collocated public facilities within the vicinity of the Approved Facility. No locations were identified for the placement of a new freestanding monopole or tower as this would be contrary to the Code and Standards. However, in response to City Council requests, Section V of this analysis reviews two right-of-way alternatives in the vicinity of the Approved Facility.

Collocation Opportunities on Public Facilities

The clear preference of the City of Martinez Code and Standards is the collocation of facilities on publicly-used structures. Verizon Wireless identified two opportunities in this preferred category, as follows.

1. PG&E Tower (Approved Facility)

814 Carter Acres Lane
APN: 365-150-053
Elevation: 371.5 feet
Zoning: R-80



Located west of Reliez Valley Road on a developed residential parcel, the Approved Facility consists of a 12 foot lattice extension to an existing 162 foot PG&E transmission tower which already hosts an existing T-Mobile wireless communications facility. Verizon Wireless's lattice extension, designed to match the PG&E structure, will support nine new panel antennas, and radio equipment is located in a 473 square foot lease area within the footprint at the base of the transmission tower. Such attachment of antennas on an existing public utility structure (as well as location of equipment within the tower footprint) specifically complies with requirements for permitted wireless telecommunications facilities in residentially-zoned conservation areas. (Standards § III.D) As a result of collocation, existing fiberoptic telecommunications and electrical utilities service are already available at the site and do not need to be installed from adjacent Reliez Valley Road. Similarly, existing road improvements avoid the need to install a new all-weather access roadway to the site. In this way, collocation minimizes the land use impacts to the site in keeping with preferences expressed in the Code and Standards.

The height achieved by the lattice extension to this transmission tower as well as the facility's location in the center of the Coverage Gap ensure that the Approved Facility meets Verizon Wireless's coverage objectives, including stretches of Alhambra Valley Road to the north and Reliez Valley Road to the east and south. Additionally, placement

of the Approved Facility on this transmission tower that already supports another carrier's antennas qualifies as collocation, which is the top locational preference according to the Standards, and avoids placement on other nearby public structures in undeveloped and recreational areas. (Standards § III.B) By complying with the City's location standards and minimizing the need to utilize additional public utility structures or construct new towers, this location is the preferred and least intrusive option for Verizon Wireless's facility.

In response a question from the City Council, Verizon Wireless investigated the possibility of additional screening on the transmission tower and received the below response from Pacific Gas and Electric rejecting any such additions to the transmission tower.

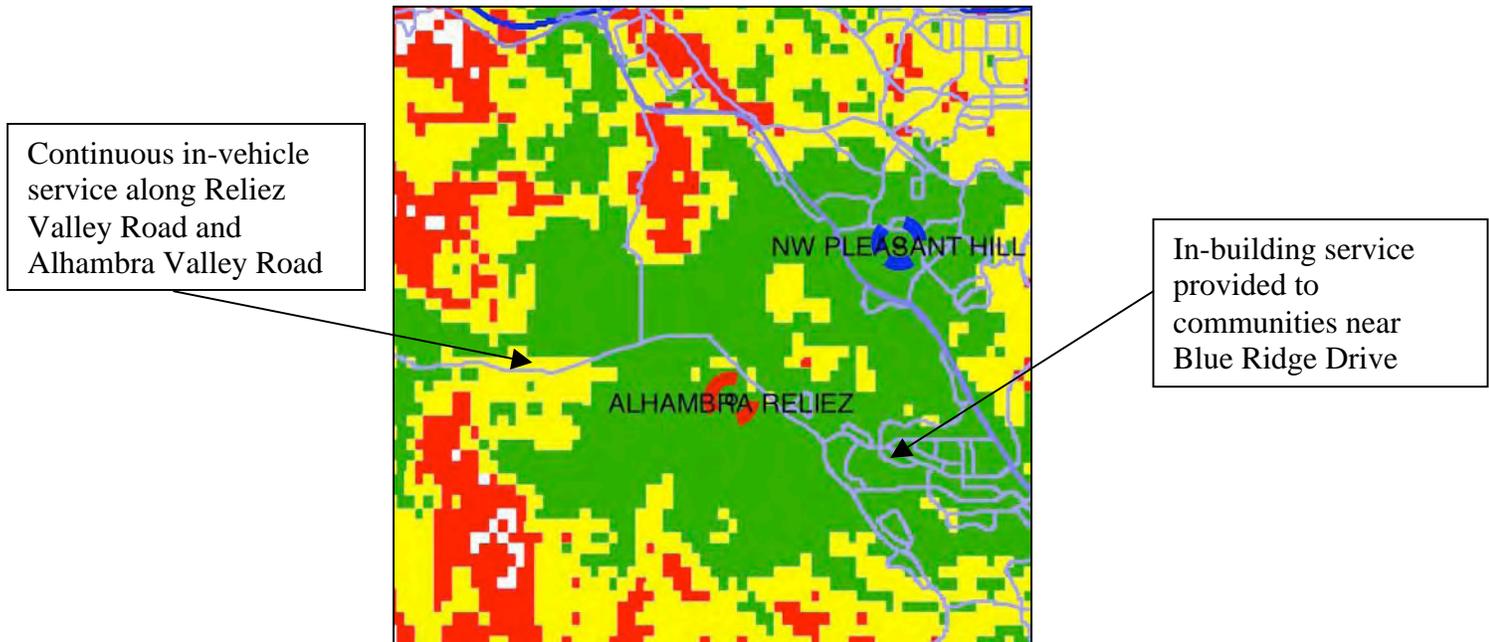
From: Jacobson, Eric
Sent: Tuesday, July 31, 2012 1:08 PM
To: Clarence Chavis
Subject: Alhambra Reliez - Screening Request on Transmission Tower

Clarence,

Per our conversation; PG&E will not allow any attachments, to its tower(s) that are not directly related to the receiving and transmitting of the carriers' wireless network. Such attachments would include any sort of "screening" for both RF or for any sort of "stealthing". This is to reduce the overall amount of equipment and loading necessary to accommodate the site.

Regards,
Eric Jacobson
Manager, Wireless Account Services
Pacific Gas and Electric
245 Market St., Rm. 1047 (N10D)
San Francisco, CA 94105

Propagation map for Approved Facility



The above propagation map confirms that the Approved Facility provides excellent in-building service throughout the Coverage Gap. It also provides excellent in-vehicle coverage along both Alhambra Valley Road and Reliez Valley Road.

Coverage prediction plots such as the one above provide important information regarding the anticipated level of signal, and therefore the projected coverage provided by a site at a given location. The areas in green reflect good coverage that meets or exceed thresholds to provide consistent and reliable network coverage in vehicles and in homes. The areas in yellow and red depict decreasing levels of coverage, respectively, with yellow areas generally representing reliable in-vehicle coverage, and red areas depicting areas reliable for outdoor use only. Anything less than that that will show as white on the map since there is no usable signal at that location.

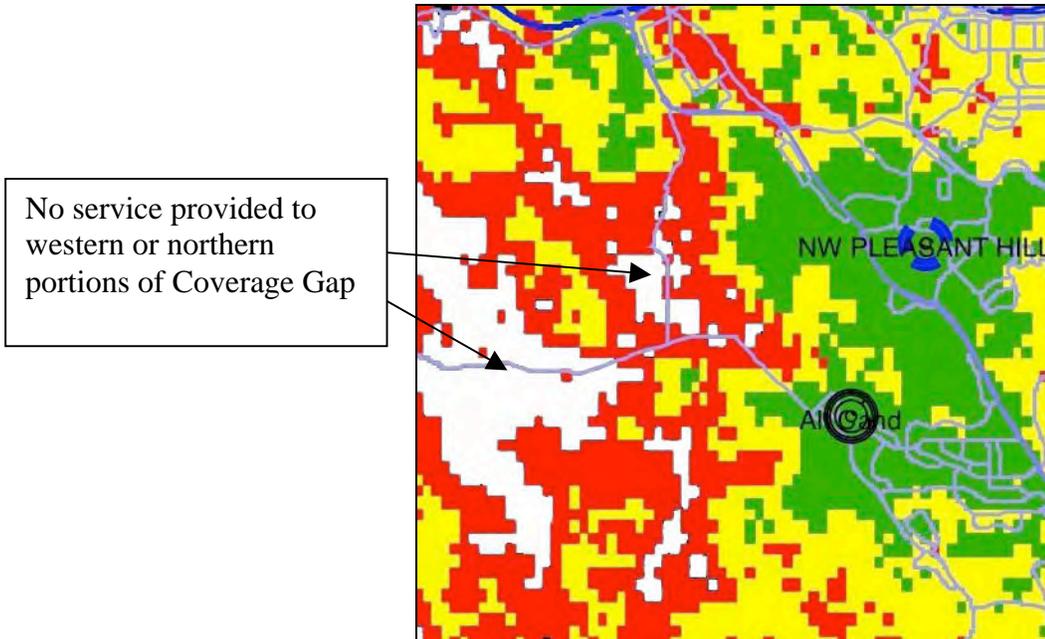
2. **Golden Hills Park**
Bernice Lane
APN: 164-150-024
Elevation: 226 feet
Zoning: RF



Located near the center of the Coverage Gap, this seven acre City park contains a one-story City park building with City public safety antennas mounted on the roof. As a recreational facility zoned parcel, any new antennas at this City park would be ineligible for administrative approval. The park facility is situated at an elevation 145 feet lower than the Approved Facility parcel, and lacks any tall structures of the necessary height for Verizon Wireless antennas to achieve radio frequency propagation to the Coverage Gap. In fact, the building supporting the City's antennas is just 13 feet tall, a total of over 300 feet lower in elevation than the antennas of the Approved Facility. Lacking adequate height for sufficient radio frequency propagation to the Coverage Gap, absent an extremely tall tower, this location is not suitable for Verizon Wireless's facility.

In response to City Council inquiries and to confirm that the Golden Hills Park site lacks adequate elevation to provide radio frequency coverage to the Coverage Gap, Verizon Wireless radio frequency engineers prepared a propagation map using a hypothetical antenna height of 60 feet map (see following page). The below propagation map clearly demonstrates that a wireless facility at this location would not provide service to the northern half of the Coverage Gap and minimal signal to eastern and southern portions of the gap. Finally, it should be noted that installation of a new monopole antenna structure at this location would be disfavored under the Code and Standards where an alternative collocation opportunity is available.

*Propagation map for hypothetical
60 foot antenna height at Golden Hills Park*



The above propagation map confirms that a 60 foot antenna height facility at Golden Hills Park would not provide service to the northern half of the Coverage Gap and minimal signal to western and southern portions of the Coverage Gap.

Public Facilities without Collocation

Verizon Wireless continued the investigation for a suitable location by identifying public utility structures within the Coverage Gap where collocation is not available. Of two such public utility structures identified, neither provides adequate access for a Verizon Wireless facility. New correspondence was received from the landowners for adjacent PG&E transmission towers to the east and west of the Approved Facility that confirms that those towers are not available to Verizon Wireless.

3. PG&E Tower, Briones Regional Park

East Bay Regional Park District, Unincorporated Contra Costa County

APN: N/A

Elevation: 475 feet

Zoning: N/A



This PG&E transmission tower is located next to a hiking trail in Briones Regional Park on East Bay Regional Park District land. This tower does not currently support any communications antennas. The current East Bay Regional Park District Communications Site Policy requires new facilities to “meet District criteria for reduction of visual impacts to park visitors”. (Communications Site Policy §IV(C)(1)) The policy also encourages consolidation of communications sites. (*Id.* §IV(C)(7)(i)) Verizon Wireless rejected use of this alternative PG&E tower due to a lack of adequate access. To locate a wireless facility at this tower will require upgrading of the current dirt access to a one-quarter mile roadway that would meet the adopted County road standards that comply the Contra Costa County Fire Code and SRF Fire Safe Regulations. These standards, attached as Exhibit B, generally require a 20 foot wide paved roadway with turnouts and a 60 foot hammerhead turnaround. In addition, there is presently no available electrical or telephone access to the tower, which would require installation of an approximately one-quarter mile underground trench for power and telephone utilities to be provided to a wireless facility. The lack of construction, maintenance or utility access to this tower make it an unsuitable alternative due to adverse impacts to the site to provide this adequate access that would be contrary to East Bay Regional Park District policy.

Notwithstanding the above concerns regarding access, in response to the City Council's request, Verizon Wireless re-initiated contact with the East Bay Regional Park District regarding the availability of the Briones Regional Park transmission tower for Verizon Wireless's facility. Informal communications from the East Bay Regional Park District indicate that they would not be interested in allowing a facility or access road, but that a formal application would have to be filed with a formal decision not likely for several months. To comply with district procedures, Verizon Wireless has filed an application which will be heard by a District committee on September 5, 2012. The application would next be heard by a Board committee, likely in November 2012, with no formal action on the application for many months to possibly a year.

Notwithstanding the fact that the East Bay Regional Park District Board will not take final action on Verizon Wireless's application for several months, Verizon Wireless has received correspondence from the park district that confirms Verizon Wireless's longstanding belief that approval of the district Board is unlikely. In correspondence dated August 15, 2012, Administrative Analyst Renee Patterson, referencing Verizon Wireless's application, states "it is not likely that it would be approved since the Operations managers are not behind the project." The full text of Ms. Patterson's email is below.

Based upon the correspondence received from the East Bay Regional Park District, Verizon Wireless concludes that the Briones Regional Park PG&E transmission tower is not a feasible alternative due to an unwilling landlord and lack of access as described above.

From: Renee Patterson
Sent: Wednesday, August 15, 2012 9:22 AM
To: John McGaughey
Cc: Mimi Waluch
Subject: RE: Potential Verizon Cell Site at Briones Regional Park

Hi John,
I have received feedback on your Verizon cell site proposal from some of the park managers for the area in question. At this time, they believe this site proposal would have a negative impact to the quality of the recreational experience the District is trying to provide. The Operations Revenue Manager will discuss this proposal with other District managers in the next month or so but it is not likely that it would be approved since the Operations managers are not behind the project. I cannot give you any timeline for this review process, it could take many months to a year for review. If you have any further questions, please let me know.



Renee Patterson
Administrative Analyst II | Operations Administration
East Bay Regional Park District

4. PG&E Tower, East of Reliez Valley Road

Reliez Valley Road and Carter Acres Lane

APN: 164-150-022

Elevation: 535 feet

Zoning: R-10



This PG&E transmission tower is located on a privately-owned pristine hilltop zoned R-10, slightly more than one-quarter mile east of the Approved Facility. This tower does not currently support any communications antennas. Like the PG&E tower to the west of the Approved Facility, a wireless facility at this tower will require upgrading of the current dirt access to a one-quarter mile roadway that would comply with applicable standards. These standards, comparable to those for the County attached as Exhibit B, generally require a 20 foot wide paved roadway with turnouts and a 60 foot hammerhead turnaround. In addition, there is presently no available electrical or telephone access to the tower, which would require installation of an approximately one-quarter mile underground trench for power and telephone utilities to be provided to a wireless facility. The lack of adequate construction, maintenance or utility access to this tower make it an unsuitable alternative due to adverse impacts to the site to provide this access that would be contrary to the City of Martinez Code and Standards.

In response to the City Council's request, Verizon Wireless re-initiated contact with the owner of the parcel where this PG&E transmission tower is located, as set forth in the email correspondence on the following page, and the ownership has indicated they have no interest in leasing ground space for a Verizon Wireless facility at this location.

From: Kitty Lew
Sent: Thursday, July 26, 2012 12:01 PM
To: Eric Waldspurger
Subject: RE: Potential Verizon Site in Martinez, CA

The ownership entity you named is incorrect. Nevertheless, my principal is not interested at this time b/c the cell site may adversely impact any entitlements under way. Thank you.

Kitty L. Lew

From: John McGaughey
Sent: Friday, July 20, 2012 4:58 PM
To: Kitty Lew
Cc: Eric Waldspurger; Clarence Chavis
Subject: RE: Potential Verizon Site in Martinez, CA

Hello,

Were you able to discuss this project with the owner? Please let me know.

FYI – I will be out of the office for the next couple weeks. Please copy Eric and Clarence with your response.

Thanks!

John McGaughey
Ridge Communications, Inc.
12667 Alcosta Blvd., Suite 175
San Ramon, CA 94583
925-498-2340 office
925-498-2341 fax

From: John McGaughey
Sent: Monday, July 16, 2012 2:12 PM
To: Kitty Lew
Subject: Potential Verizon Site in Martinez, CA

Hi,

It was nice talking to you this afternoon.

Verizon Wireless is looking at siting opportunities in this area and has identified a PG&E (electric) tower that may be a feasible candidate for a cell site.

The tower is located on property situated along Reliez Valley Road near Horizon Drive in Martinez, CA (APN: 164-150-022-6). [Proprietary details of Verizon Wireless offer deleted.]

Could you please let me know if the owner would have any interest in pursuing this opportunity with Verizon? I'm trying to screen several potential candidates quickly, so your prompt feedback would be very much appreciated.

Thanks!

John McGaughey
Ridge Communications, Inc.
12667 Alcosta Blvd., Suite 175
San Ramon, CA 94583
925-498-2340 office
925-498-2341 fax

V. Council-Directed Analysis

At the City Council appeal hearing for the Approved Facility on July 11, 2012, the Council expressed an interest in a more complete review of the alternative site locations evaluated by Verizon Wireless that resulted in the summary analysis set forth in Section IV above. In addition, the Council expressed interest in Verizon Wireless's review of specific sites identified by the Council. To accommodate this request, the Council continued the appeal hearing to allow Verizon Wireless to provide this information. In response to the City Council's request, six additional alternatives for the Approved Facility are analyzed below. In general, these sites were not included in the initial Verizon Wireless Alternatives Analysis provided to the Council because they fail to provide adequate radio frequency propagation to Verizon Wireless's identified Coverage Gap. The six-site analysis, which includes City-proposed sites and a description of right-of-way alternatives, is as follows:

Industrial, Commercial, Professional or Government Facilities Parcels

Industrial, commercial, professional and government facilities zoned parcels are preferred locations for wireless facilities under the Code. The two industrial, commercial, professional and government facilities zoned parcels closest to the Coverage Gap are reviewed below.

5. City of Martinez Water Tank

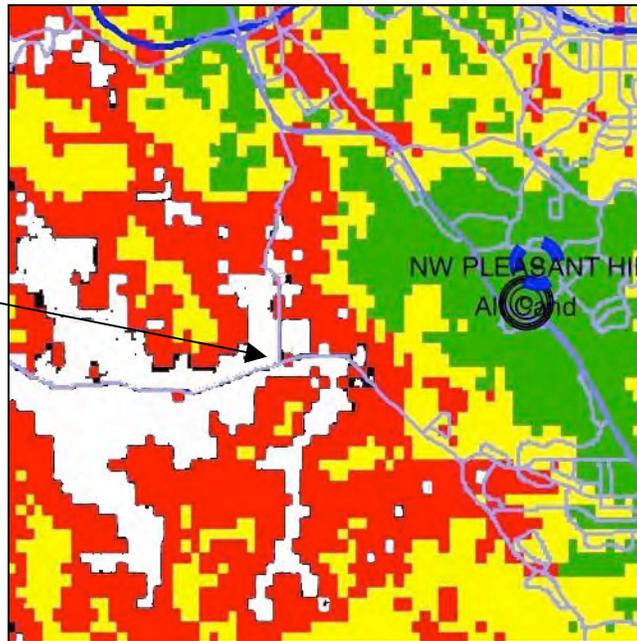
Alhambra Avenue
APN: 154-690-002
Elevation: 390 feet
Zoning: GF



This City of Martinez water tank, located on the government facility zoned parcel nearest to the Approved Facility, lies one mile northeast of the location of the Approved Facility at a similar elevation and approximately one-quarter south of the existing Northwest Pleasant Hill Verizon Wireless facility. Radio signal from this alternative fails to reach the Coverage Gap due to an intervening 600 foot topographic ridge to the southwest. In addition, this location would interfere with the Northwest Pleasant Hill Verizon Wireless facility. A propagation map showing that radio signals from this location fail to provide service to the Coverage Gap is shown on the following page.

*Propagation map for hypothetical
60 foot antenna height at
City of Martinez Water Tank on
Alhambra Avenue*

Virtually no signal
provided into
Coverage Gap



The above propagation map confirms that a 60 foot antenna height facility at the City of Martinez water tank on Alhambra Avenue will provide hardly any wireless service to the identified Coverage Gap due to tall mountains which exist between this location and the gap area.

6. John Swett Elementary School

4955 Alhambra Valley Road

APN: 366-130-021

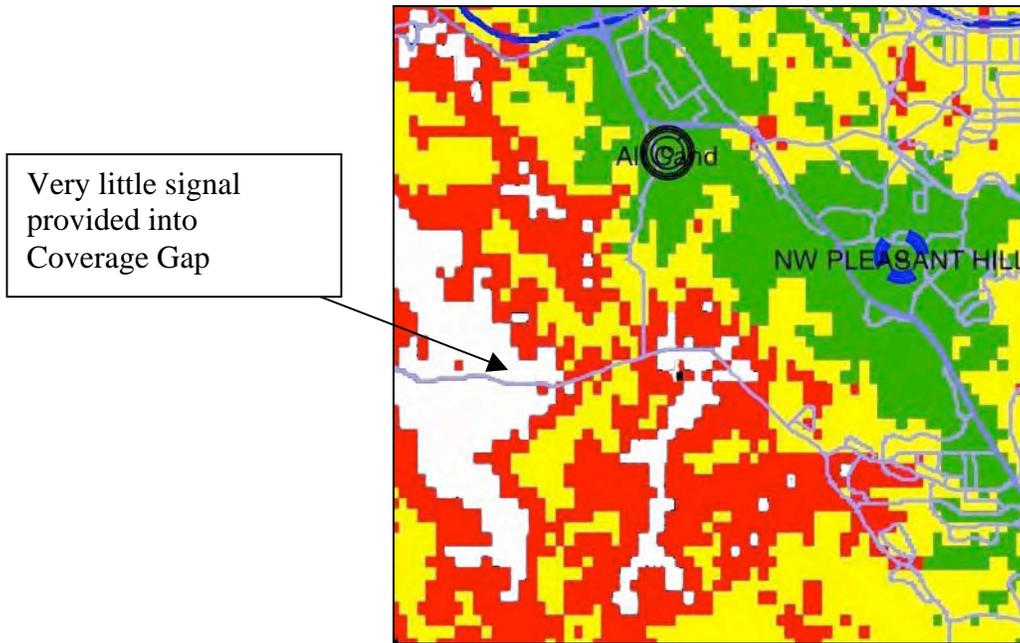
Elevation: 170 feet

Zoning: GF



This elementary school is located on a government facility zoned parcel and lies one and one-quarter miles north of the location of the Approved Facility nearly 200 feet lower in elevation. Radio signal from this alternative fails to reach the Coverage Gap due to its lower elevation, distance to the north and an intervening 600 foot topographic ridge to the south. A propagation map showing that radio signals from this location fail to provide service to the Coverage Gap is shown on the following page.

*Propagation map for hypothetical
60 foot antenna height at
John Swett Elementary School*



The above propagation map confirms that a 60 foot antenna height facility at the John Swett Elementary School will not provide adequate wireless service to the identified Coverage Gap.

Collocation Opportunities on Public Facilities

Through its investigation of available public facilities in the vicinity of the Approved Facility, Verizon Wireless identified a City-owned water tank facility that includes City of Martinez public safety antennas, which is reviewed below.

7. City of Martinez Water Tanks

5129 Chelsea Drive, Unincorporated Contra Costa County

APN: 367-210-002

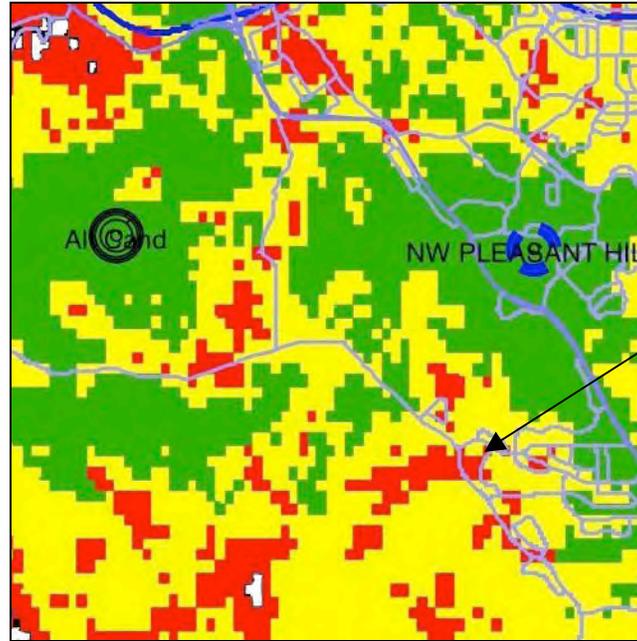
Elevation: 745 feet

Zoning: N/A



This City-owned water tank location is located in unincorporated Contra Costa County and lies one and one-half miles northwest of the Approved Facility at nearly double the elevation. Notwithstanding this increased height, intervening topography and distance from the Coverage Gap prevent this facility from providing adequate signal to the Coverage Gap. A propagation map utilizing a 60 foot antenna height demonstrating the lack of adequate coverage provided by this alternative site is shown below.

*Propagation map for hypothetical
60 foot antenna height at
City of Martinez Water Tank on
Chelsea Drive*



This location does not provide in-building service to these communities

The above propagation map confirms that a 60 foot antenna height facility at the City of Martinez Water Tanks on Chelsea Drive fails to provide signal coverage to the southern half of the identified Coverage Gap.

Public Facilities without Collocation

Through its investigation of available public facilities in the vicinity of the Approved Facility, Verizon Wireless identified two water tank facilities, which are reviewed below.

8. City of Martinez Water Tank

Stone Valley Court, Unincorporated Contra Costa County

APN: 367-230-029

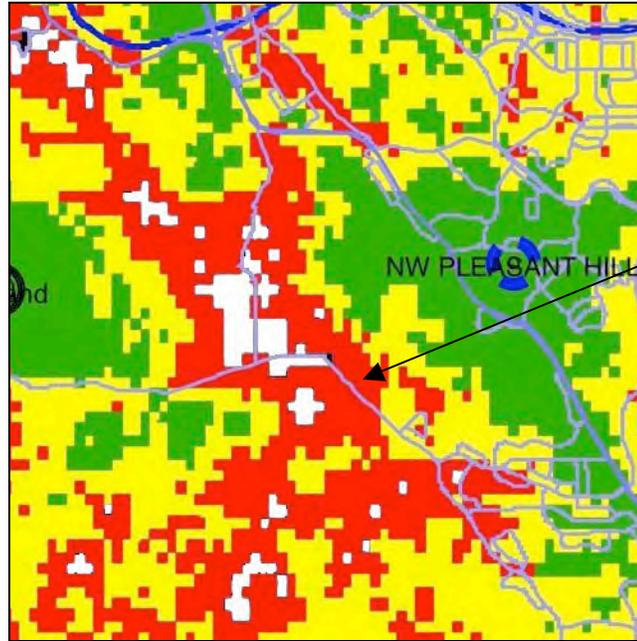
Elevation: 530 feet

Zoning: N/A



This City-owned water tank location is located in unincorporated Contra Costa County and lies nearly two miles northwest of the Approved Facility at a slightly higher elevation. Notwithstanding this increased height, intervening topography and distance from the Coverage Gap prevent this facility from providing adequate signal to all but the western edge of the Coverage Gap. A propagation map utilizing a 60 foot antenna height demonstrating the lack of adequate coverage provided by this alternative site is shown on the following page.

*Propagation map for hypothetical
60 foot antenna height at
City of Martinez Water Tank on
Stone Valley Court*



This alternative provides very little signal into the Coverage Gap

The above propagation map confirms that a 60 foot antenna height facility at the City of Martinez Water Tank on Stone Valley Court fails to provide signal coverage to the majority of the identified Coverage Gap.

- 9. East Bay Municipal Utility District Water Tank**
Sunrise Ridge Road, Unincorporated Contra Costa County
APN: 365-170-029
Elevation: 645 feet
Zoning: N/A

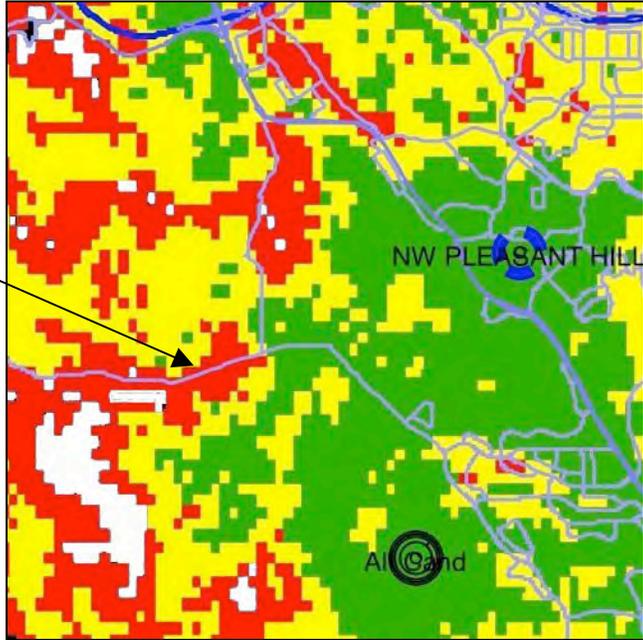


This East Bay Municipal Utility District water tank site is located approximately three-quarters of a mile south of the Approved Facility at an elevation approximately 250 feet higher. While providing radio signal propagation to the southern two-thirds of the Coverage Gap, this site fails to provide service to the northern third of the Coverage Gap including portions of Alhambra Valley Road. In addition, as stated by Verizon Wireless Radio Frequency Design Engineer Stefano Iachella, “It is way too high and sees all of Concord, Pleasant Hill, and much of Walnut Creek. The interference would be too much for the network to handle and would cause more harm than good.”³ Due to inadequate signal propagation to the northern portions of the Coverage Gap and certain interference with existing Verizon Wireless network facilities, this alternative fails to provide acceptable radio frequency coverage to the Coverage Gap.

³ Email correspondence from Stefano Iachella dated July 17, 2012.

*Propagation map for hypothetical
60 foot antenna height at
East Bay Municipal Utility District
Water Tank on Sunrise Ridge Road*

No in-building or
in-vehicle service to most
of Alhambra Valley Road



The above propagation map confirms that a 60 foot antenna height facility at the East Bay Municipal Utility District Water Tank on Sunrise Ridge Road fails to provide signal coverage to northern areas of the identified Coverage Gap.

Right-of-Way Location

Council Members expressed an interest a review of a utility pole located at the intersection of Reliez Valley Road and Carter Acres Lane as a potential site. The results of this investigation are set forth below.

10. Utility Pole

Right-of-Way of Reliez Valley Road at Carter Acres Lane

APN: N/A

Elevation: 288 feet

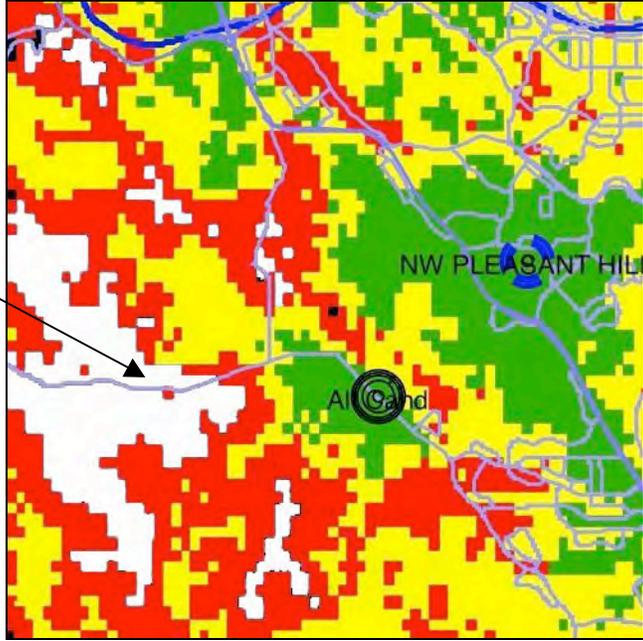
Zoning: N/A



Verizon Wireless radio frequency engineers investigated use of the utility pole at the intersection of Reliez Valley Road and Carter Acres Lane. Through this investigation, the engineers determined that hypothetical antennas mounted at 25 feet on the utility pole, while providing strong signal to a small portion of the middle of the Coverage Gap, would fail to provide adequate signal to the majority of the Coverage Gap due to the low antenna height and valley topography along Reliez Valley Road. In addition to limited coverage, this utility pole location would require placement of ground-mounted radio cabinets and equipment within a limited right-of-way area. In summary, the low elevation of the utility pole, approximately 100 feet below the Approved Facility, and valley topography of Reliez Valley Road prevent this alternative from providing adequate service to the Coverage Gap.

*Propagation map for hypothetical
25 foot antenna height at
utility pole on Reliez Valley Road at
Carter Acres Lane*

Very little signal
provided to Alhambra
Valley Road



The above propagation map confirms that a 25 foot antenna height facility at the utility pole on Reliez Valley Road at Carter Acres Lane only provides service to a small portion of the Coverage Gap.

Conclusion

Verizon Wireless evaluated all existing public facility structures within the Coverage Gap. In this supplemental Alternatives Analysis, Verizon Wireless further investigated six additional alternatives including government facility zoned parcels, public facility collocations, public facilities in the general vicinity of the Approved Facility and a right-of-way facility. Based on the foregoing analysis, as supplemented by propagation maps and correspondence from landowners, Verizon Wireless continues to believe that the Approved Facility, which provides for collocation of antennas on an existing public utility tower that already hosts another carrier's antennas, fully complies with the Code and Standards, and is the least intrusive and feasible means to fill the identified gap in Verizon Wireless's service.

**Verizon Wireless
Alhambra Reliez
Locations of Sites
Proposed and Alternatives**

6. John Swett Elementary School
4955 Alhambra Valley Road

7. City of Martinez Water Tanks
5129 Chelsea Drive

5. City of Martinez Water Tank
Alhambra Avenue

8. City of Martinez Water Tank
Stone Valley Court

4. PG&E Tower
East of Reliez Valley Road

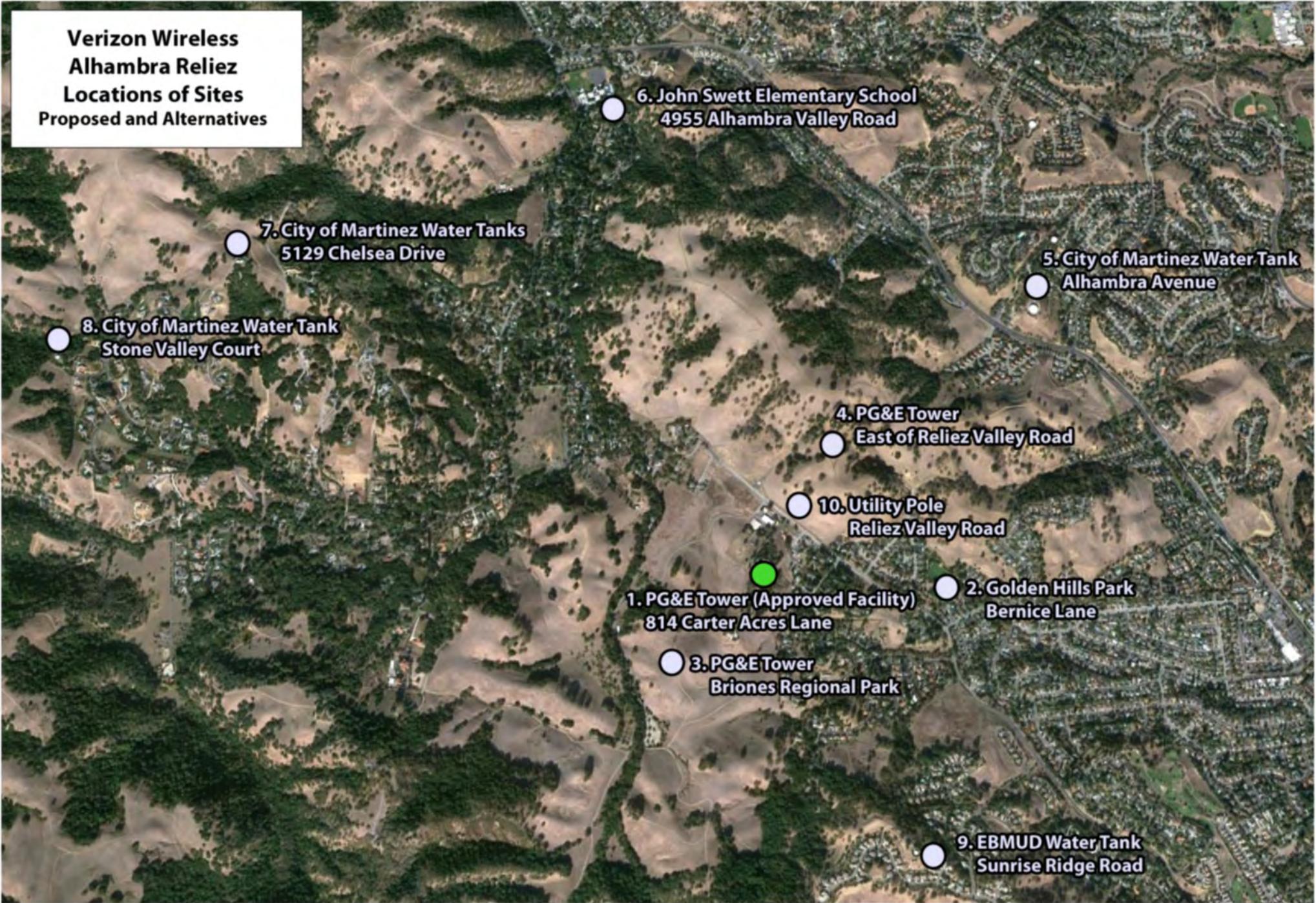
10. Utility Pole
Reliez Valley Road

1. PG&E Tower (Approved Facility)
814 Carter Acres Lane

2. Golden Hills Park
Bernice Lane

3. PG&E Tower
Briones Regional Park

9. EBMUD Water Tank
Sunrise Ridge Road





June 29, 2012

To: City of Martinez

From: Stefano Iachella, Radio Frequency Design Engineer,
Verizon Wireless Network Engineering Department

Subject: Statement of Stefano Iachella in support of Verizon Wireless's
approved telecommunications facility at 814 Carter Acres Lane,
Martinez

SUMMARY

This statement clarifies coverage gaps and the coverage objectives for the Verizon Wireless telecommunications facility consisting of an addition to a PG&E transmission tower at 814 Carter Acres Lane in Martinez (the Approved Facility). Verizon Wireless Performance Engineers have identified a gap in coverage in the southernmost area of the city of Martinez. This gap consists of an area along and surrounding a 1.5 mile stretch of Reliez Valley Road between Hidden Pond Road and its northern terminus and an approximately 1 mile long stretch of Alhambra Valley Road from Quail Lane to Millthwait Drive (the Coverage Gap). This Coverage Gap area is shown on the attached Coverage Map (Exhibit A). Lack of coverage in this area is preventing the Verizon Wireless network from being accessible to the many residents and visitors in this area and is causing dropped calls for mobile users along Reliez Valley road. Exhibit B is a graphical depiction of the number of call failures actually occurring near the Gap Area measured over a one week period. This gap is significant to Verizon Wireless because it affects important stretches of roadway, in-building coverage for thousands of residents within the Coverage Gap, and E911 locator service. The Approved Facility will address these significant gaps in service and provide new wireless access to this area of Martinez.

Coverage Gap

Currently, our customers are experiencing inaccessibility (no signal) and impaired network reliability (dropped calls) within this Coverage Gap. The gap area includes all residences in Martinez south of Golden Hills Park along with

Reliez Valley road, which, in this area, serves approximately 150 cars per hour in each direction during the day.¹ This road also hosts a well-used Class 3 bike path. In addition to these significant portions of Martinez, the gap also includes the Meadowbrook Golf Club and the northern portion of Briones Regional Park, including the Park Office, where cellular is the only emergency means of communication.

Topographic Obstructions

The physical layout of the area to be served by the approved site is a narrow valley at the bottom of which lies Reliez Valley Road and Alhambra Valley Road. Wireless communication uses technology which generally requires line-of-sight visibility between the mobile device and site antennas. As a consequence, the hills which rise several hundred feet on either side of the valley create an isolated area that cannot be served by existing cell sites. One Verizon Wireless site exists near the gap area. It is called "Northwest Pleasant Hill" and is located on Wildcroft Drive along Alhambra Avenue. Though this site is only one mile east from the Approved Facility, a line of hills over 300' in elevation prevent any signal from this facility from reaching the Coverage Gap area. An additional site, "Palos Verdes" has been approved at a location along Pleasant Hill road in Walnut Creek over three miles southeast of the Approved Facility. Even when this site is built, signal from it will not reach into the gap area due to distance and topography. The only solution to provide signal into the Coverage Gap area is to locate a site within the gap area in a location that is able to provide signal throughout the gap area. Since the Coverage Gap area is not receiving adequate signal from existing sites, Verizon Wireless customers in this area frequently experience an inability to make, hold or receive calls ("Call Failures"). In fact, network data shows that excessive Call Failures are already occurring in the Gap Area. The Approved Facility is designed to address the Call Failures occurring in the Gap Area.

Vehicular Gap

Currently, the gap area suffers from unreliable in-vehicle coverage. A drive test was conducted (See Drive Test Map, Exhibit C) using industry standard methodology to measure the level of signal that currently exists along Reliez Valley Road and Alhambra Valley Road. Typically, as a wireless user travels between the discrete coverage areas of two or more sites, signal level is adequate to allow for a handoff of the call to occur from one site to the next. If the handoff is successful, it is transparent to the user and results in seamless coverage. However, as is evident in the Drive Test Map, signal is poor to nonexistent along Reliez Valley Road and Alhambra Valley Road. This lack of signal prevents successful handoffs, causes dropped calls and precludes reliable wireless coverage. Without the Approved Facility, drivers and cyclists, and even City of Martinez Police Officers (who rely on Verizon Wireless phones) will be without potentially lifesaving wireless coverage within the Coverage Gap Area.

¹ 2003 Traffic Study. <http://www.co.contra-costa.ca.us/depart/cd/current/AlhambraValley/05Ch3-12%20Transportation.pdf>

E911 Service Gap.

As a telecommunications carrier licensed by the Federal Communications Commission and as one of the two largest carriers serving California, Verizon Wireless is committed to providing reliable emergency services to the public. The existing coverage gap affects not only the ability to place emergency calls within the Coverage Gap area, but also the ability of the network to determine the geographic location of the calling device ("E911 Service") to assist public safety professionals in locating callers in distress. The approved facility will provide more reliable E911 locating capabilities for 911 calls which occur within the coverage objective area.

Conclusion

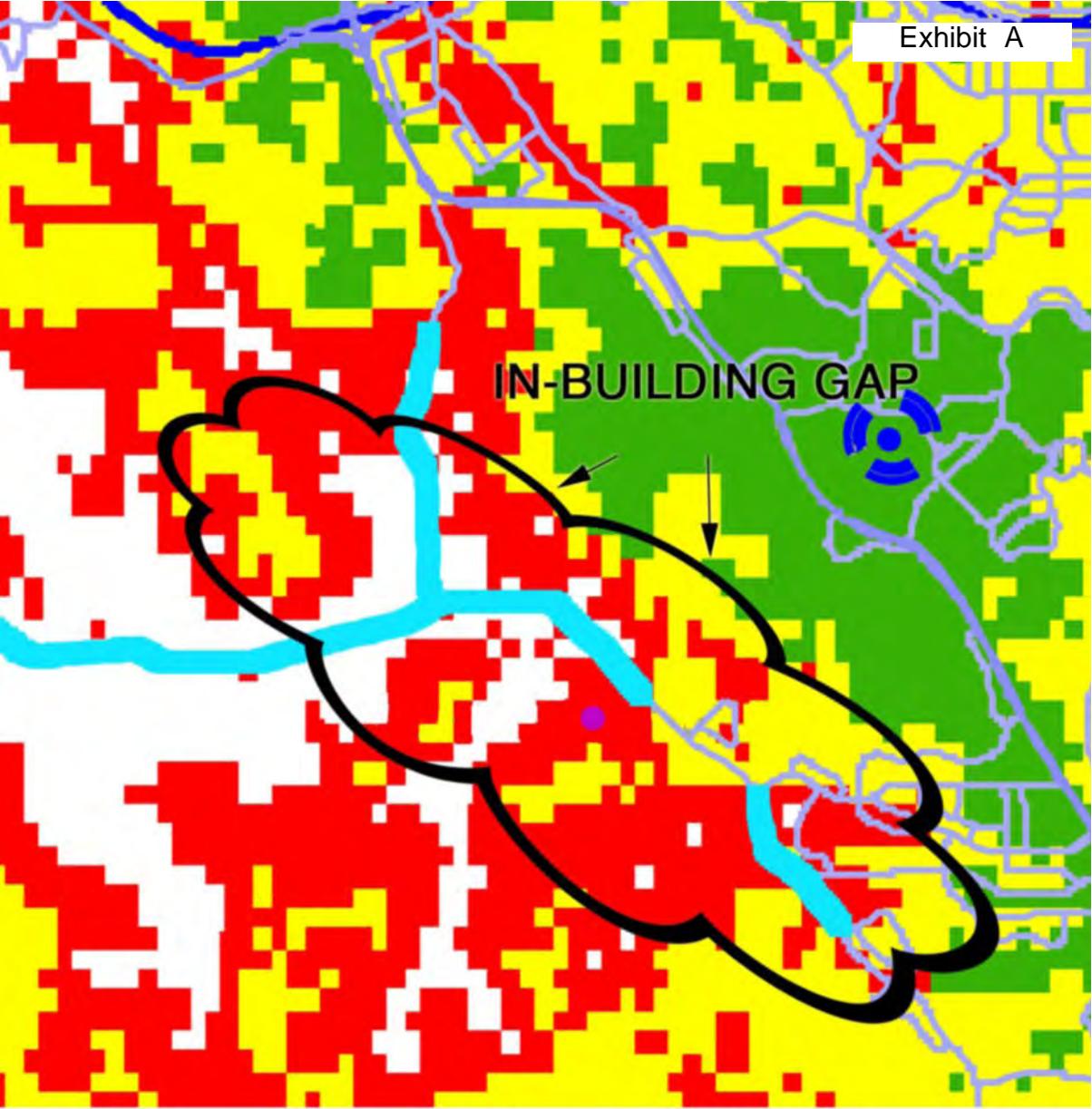
The Approved Facility is the most effective way Verizon Wireless can address the existing Coverage Gap. The approved site will provide new in-building service to the residences on either side of Relief Valley Road and Alhambra Valley Road. (See approved coverage map, Exhibit C). New in-transit service will be added along over 2.5 miles of roadway within the Coverage Gap area. Also new on-street signal will be provided to recreational areas including Briones Regional Park. In sum, the Approved Facility will enhance Verizon Wireless service over 3.6 square miles of Martinez, Contra Costa County and Concord, and provide improved signal to a thousands of homes and vehicles each day.

Respectfully submitted,



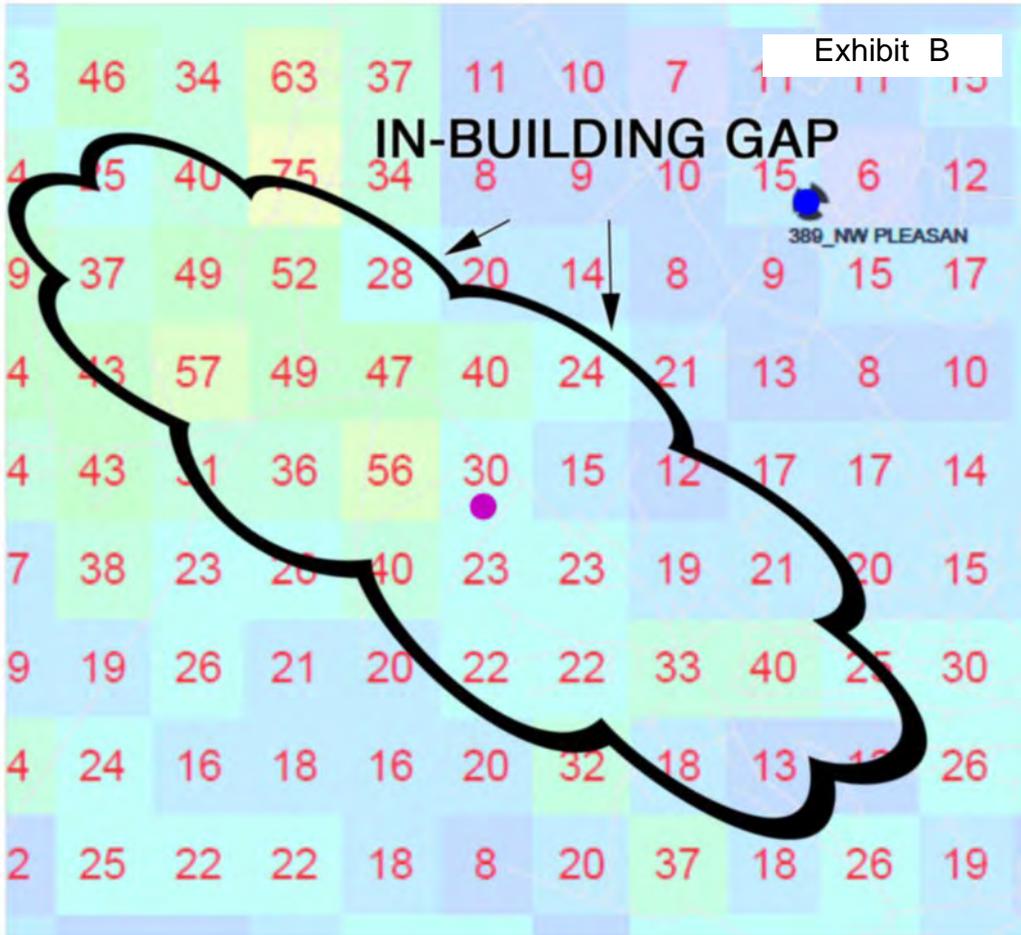
Stefano Iachella
RF Design Engineer
Network Engineering Department
Verizon Wireless

* August 3, 2012 - Graphics have been modified to match Alternatives Analysis with my approval SM



IN-BUILDING GAP

- Existing Site
- Proposed Site
- = in-building
- = in vehicle
- = on street
- = major thoroughfare vehicle gap

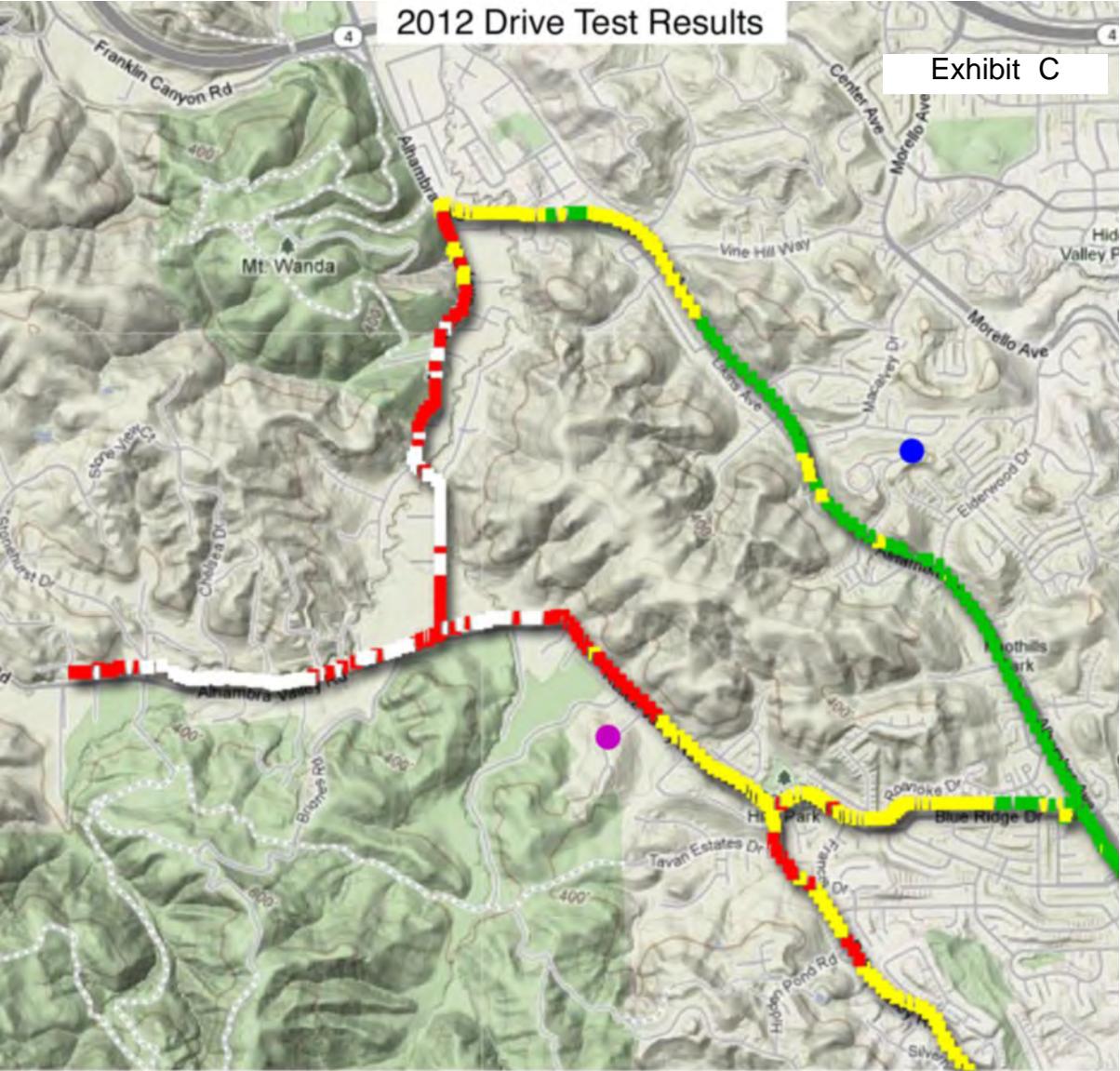


- Existing Site
- Proposed Site

Call Failure Map (over a 1 week period)

2012 Drive Test Results

Exhibit C



● Existing Site

● Proposed Site

■ = in-building

■ = in vehicle

■ = on street

TO: BOARD OF SUPERVISORS

FROM: Harvey Bragdon, Director, Community Development
J. Michael Walford, Public Works Director

DATE: May 2, 1995

SUBJECT: PRIVATE RURAL ROAD DESIGN STANDARDS

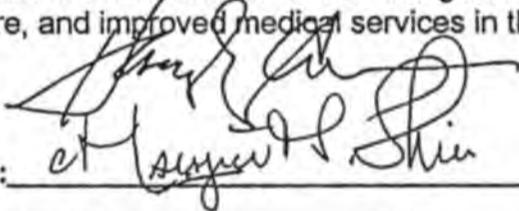
SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

I. Recommended Action:

- A. APPROVE the following design standards for private rural roads.
- B. DIRECT the Director of the Community Development Department and the Public Works Director to complete the policy sections on water supply, defensible space, setbacks, and landscaping.
- C. DIRECT the Director of the Community Development Department and the Public Works Director to revise any County Ordinance code requirements that are inconsistent with these design standards and to bring the revised code sections back to the Board for approval.

II. Financial Impact:

Staff time will be required to revise the Ordinance Code. Development costs in rural areas may increase, however, emergency response time will be reduced resulting in reduced property loss and fire fighting costs in the case of a fire, and improved medical services in the case of a medical emergency.



Continued on Attachment: X

SIGNATURE: _____

- RECOMMENDATION OF COUNTY ADMINISTRATOR
- RECOMMENDATION OF BOARD COMMITTEE
- APPROVE OTHER

SIGNATURE(S): _____

ACTION OF BOARD ON _____

APPROVED AS RECOMMENDED OTHER

COPY
COPY

VOTE OF SUPERVISORS

UNANIMOUS (ABSENT _____)

AYES: _____ NOES: _____

ABSENT: _____ ABSTAIN: _____

JMW:RMA:cl:mw
g:\engsv\work\bo2.t5
contact: Milch Avalon 313-2371
OrigDiv. Public Works
attachment

- cc:
- Fire Districts (via PWD)
 - Transportation Engineering
 - Community Development Department
 - County Administrator's Office
 - Building Inspection Department
 - California Department of Forestry (via PWD)
 - County Counsel
 - Building Industry Association (via PWD)
 - CELSEB (via PWD)



III. Reasons for Recommendations and Background:

On December 17, 1991, the Board of Supervisors adopted Resolution 91/824 in response to the "State Responsibility Area Fire Safe Regulations" (Title 14, Division 1.5, Chapter 7, Section 1270 of the California Code of Regulations). The State Responsibility Area (SRA) are those areas of the County served by the California Department of Forestry and roughly corresponds to the area outside the County's Urban Limit Line. Resolution 91/824 stated the Board's intent to develop standards in compliance with the SRA regulations. The SRA regulations provide minimum wild fire protection standards for new development in the State Responsibility Area of the County. Part of the regulations are directed at emergency and road access into remote and rural areas.

It has also been recognized that the County Ordinance Code, Title 9, contains road standards for private roads that are inconsistent with Fire District Ordinances and the Fire Code. Over the past year staff from the Fire Districts, California Department of Forestry, and GMEDA staff, have met to develop road standards for private roads that will satisfy the safety, engineering and planning needs of all concerned. This policy will provide a consistent set of standards for development.

These standards address the most critical aspect of the SRA regulations for wild fire protection; the access for development in rural areas. Other SRA requirements such as water supply, defensible space and access standards in urban areas will be brought to the Board at a later date. Staff is bringing this policy on rural access to the Board so the County can begin to implement measures for fire protection in the most critical areas of the County.

The SRA regulations are an existing statutory requirement for development in the County. All of the elements of this policy are currently being recommended by the California Department of Forestry and the Fire Districts in their comments on current development applications. As a result, these standards are consistent with current practices.

On September 20, 1994, this Board approved these standards in concept and referred them to the planning commissions, building industry, and engineering community for comments. Staff sent out approximately 500 requests for comments to various interested parties. Staff reviewed the standards with the engineering and development communities on two separate occasions. One of those meetings also included representatives from the Fire Districts and California Department of Forestry, and several modifications to the standards were agreed to that addressed the concerns of the engineering and development communities.

These standards were reviewed at the East County Regional Planning Commission on November 7, 1994, at the San Ramon Valley Regional Planning Commission on December 14, 1994, and the County Planning Commission on January 3, 1995. Public Testimony was also taken at these meetings. Attached is a memo to the County Planning Commission dated December 28, 1994 with additional background on the comments from the East County Regional Planning Commission, San Ramon Valley Regional Planning Commission and Consulting Engineers and Land Surveyors of the East Bay (CELSEB). After considering the matter, the County Planning Commission recommended the Board of Supervisors approve the following standards. The highlight and strikeout show all of the changes since the version the Board conceptually approved on September 20, 1994.

Adoption of these design standards is consistent with the goals and policies of the safety and public facilities/services elements of the General Plan. Reference can be made to general plan goals 7-AA, 7-AB, 7-AD, general plan policies 7-71, 7-73, and general plan implementation measures 7-az, 10as.

POLICY ON PRIVATE RURAL ROAD DESIGN STANDARDS

The following are proposed standards for rural private roads in Contra Costa County, that will meet the emergency access requirements of the Fire Code and "SRA Fire Safe Regulations." These standards apply to private roads providing two way access.

I. PRIVATE RURAL ROAD STANDARDS

1. Purpose

To establish design standards for private roads in the County's rural areas that will provide property owners with every day safe access to their property and provide adequate emergency access for medical and fire vehicles, and to implement the policies of the County General Plan. These design standards apply only to developing properties that submit an application for development after the adoption of these standards by the Board of Supervisors. These standards do not apply to pre-existing private roads serving properties that are not developing, nor do they apply to roads required as a condition of a development that was approved prior to adoption of these standards. ~~properties that have an approved development but have not yet been built their improvements.~~

2. Definitions

A private road is a road that has not been dedicated to the County, has not been accepted for maintenance by the County, or has been offered for dedication but not accepted by the County. A private road provides vehicular access to two or more parcels or to a single parcel with more than two dwelling units. Private rural roads are those private roads located outside the Urban Limit Line or within the State Responsibility Area (SRA) served by the California Department of Forestry (CDF), and in those areas within the urban limit line that are designated for open space use in the land use element of the general plan.

3. Road Widths

The private rural road shall be 20 feet wide and shall be centered in a 30 foot wide access easement. The width of roadway shall be measured normal to the centerline between the top face of the curb or edges of the pavement and shall not include roadside ditches. In addition to the 20-foot roadway, a minimum shoulder width of two feet shall be provided on each side of the road. A concrete curb or asphalt concrete dike may be substituted for the shoulder on one side of the road. Road widths shall be widened to 28 feet at fire hydrant locations. The length of widened road section shall extend a minimum of 20 feet on each side of the fire hydrant, plus at least a 25 foot long taper at each end.

4. Road Grades

The grade of a private rural road shall not exceed 16%. The road grade may be allowed to exceed 16% with mitigation described in Section 5 below.

5. Exceptions to Road Width and Road Grades

Exceptions to the pavement width and maximum grade, because of topographical constraints in hillside areas, environmentally sensitive areas, significant sized trees, or significant grouping of trees, or other physical constraints, shall be considered on the basis of relevant evidence submitted by the developer. The maximum grade of a road may be increased to 20%. The sections of roadway over 16% shall be limited to a length of 300 feet within each thousand foot length of roadway. Special pavement surfacing, such as grooved concrete or open graded asphalt, may be required on the steeper road sections. New development on existing private rural roads that are less than 20 feet in width should be discouraged unless safety or access improvements are provided. An exception to the pavement width and maximum grade may be granted by the hearing body of the Planning Agency, after review by the GMEDA, the Fire District, and the California Department of Forestry. GMEDA staff shall review the ultimate development potential of all the property served by the road in determining the proper width and grade of the road. Any exception to road grades that exceed 20% shall be reviewed and approved prior to project approval.

6. Turnaround

There are generally three types of turnarounds: cul de sac, hammerhead and pikehead. A cul de sac is a round bulb at the very end of a road. A hammerhead provides a rectangular pavement section on both sides of a road at the roads terminus and forms the shape of a "TEE". A pikehead provides a rectangular pavement section only on one side of the road.

A turnaround will be required on all private roads in excess of 150 feet in length. The radius of the edge of pavement or face of curb for a cul de sac turnaround shall be 40 feet. Alternate turnaround provisions, such as a hammerhead or pikehead, may be approved if adequate paved area is provided to accommodate normal residential traffic and emergency response vehicles. A hammerhead type turnaround shall be a minimum of sixty feet across at the top. A pikehead type turnaround shall have a 40 foot extension, measured from the edge of pavement, in each direction. All radii on the hammerhead and pikehead type turnaround shall be 28 feet. The width of the turnaround shall be no less than the width of the road.

7. Roadway Surfacing

All private roads, turnarounds, and turnouts shall be paved. An exception may be granted by the hearing body of the Planning Agency, after review by the Public Works Department and Fire District, providing the road serves an agricultural operation on property in an agriculturally zoned district and serves parcels that are 10 acres or larger in areas of Class 1 or Class 2 soils, or 20 acres or larger in non-Class 1 or Class 2 soil areas. In all cases, any portions of the private rural road that exceed 10% grade shall be paved. Portions of private roads that are not paved shall be an all weather surface designed to support a 40,000 pound fire apparatus having an axle loading of 25,000 pounds. An exception to the paving requirement may be approved for an existing unpaved road provided that safety or access improvements are constructed on the existing private road, such as turnouts, intersection improvements, sight distance improvements, road paving, etc.

8. Horizontal Curves

Changes in direction of the private road shall be made with horizontal circular curves with the edges of the pavement parallel to, and equidistant from, the centerline of the easement. The minimum centerline radius shall be 60 feet. The minimum pavement width throughout the curve shall be increased to 24 feet for those curves with a radius less than 100 feet.

9. Vertical Curves

The length of vertical curve shall be that which safely provides for a design speed of 15 mph, for private roads that will ultimately serve no more than ten parcels, and at least 20 MPH for private roads that will ultimately serve more than ten parcels but shall not be less than 100 feet.

10. Turnouts

Turnouts shall be provided at locations determined by the Public Works Director, Fire District and the California Department of Forestry. Turnouts shall be 10 feet wide and 30 feet long with at least a 25 foot taper on each end. The width of the turnout may be reduced if the total width of the road and turnout is a minimum of 28 feet.

11. Signing

Street signs shall be installed at the intersection of all streets whether public or private. The installation, size, color, reflectively, letter height and materials of private road signs shall be the same as public road signs. All private and public roads shall be identified by name through a consistent county-wide system of non-duplicated naming. All road signs shall be visible from both directions of vehicle travel for a distance of at least 100 feet. Other signing such as stop signs, weight limitation signs, one way road signs, etc., shall be installed as determined by the Fire District and the Public Works Department. All road signs shall be installed prior to the placement or installation of combustible construction materials on the site.

12. Dead End Roads

Dead end roads and cul de sac roads shall be limited in length depending on the density of development. In areas zoned for parcel sizes less than one acre the maximum length is 800 feet. In areas zoned for parcel sizes from one acre to five acres, the maximum length is 1,320 feet. In areas zoned for parcel sizes from five acres to 20 acres, the maximum length is 2,640 feet. In areas zoned for parcel sizes of 20 acres and larger, the maximum length is 5,280 feet. The length is measured from the end of the dead end road to the point where the dead end road system intersects with a road that intersects the County road system in two or more places. A turnaround shall be installed at the end of each dead end road and at 1320-foot intervals.

13. Bridges

Bridges on a private road shall be designed for an HS-20 loading. Bridge design shall not obstruct the flow of natural channels and creeks and shall be designed to pass the design flow plus freeboard. Bridges may need to be designed to allow the passage of wildlife. The location and design of the bridge and bridge abutments shall be based upon the stability of the creek banks. Bridges shall provide an unobstructed width of no less than 20 feet for a two-way road bridge and 12 feet for a one-way road bridge. A sign shall be installed at each end of the bridge stating any limitations such as the weight limit and any height restrictions, or single lane condition.

14. Vertical Clearance

Private roads shall be designed to provide for a minimum vertical clearance of 13 feet six inches.

II. RURAL GATE STANDARDS

The width of gates at gated entrances shall be two feet wider than the width of the road. ~~but shall not be less than 16 feet.~~ All gated entrances shall be located at least 30 feet from the edge of the intersecting roadway. The design of the gate shall allow a fire engine to stop and open the gate without obstructing traffic on the intersecting roadway. If the gate is locked, a locking device approved by the Fire District shall be provided.

III. RURAL DRIVEWAY DESIGN STANDARDS

1. Definition

A driveway provides vehicular access to a single parcel that serves no more than two dwelling units.

2. General Requirements

~~Driveways shall have a minimum width of 12 feet if the distance from the public or private road to the rear of the most remote dwelling unit is not more than 150 feet.~~ Driveways that are less than 150 feet in length shall be designed to the standards required by the Building Inspection Department. Driveways that are less than 150 feet in length and are less than 10 feet wide, or have less than 15 feet of vertical clearance, or have a grade greater than 16%, shall be reviewed by the Fire District and California Department of Forestry prior to issuance of a Building Permit. If the distance from the public or private road to the rear of the most remote dwelling unit is more than 150 feet, then the minimum width of the driveway shall be 16 feet, and the design of the driveway horizontal and vertical curves, surfacing, and grade shall be the same as a private rural road. Driveways that are longer than 150 feet but shorter than 800 feet shall have a turnout constructed at its midpoint. Driveways that are longer than 800 feet in length shall have turnouts at 400 foot intervals. All driveways longer than 150 feet shall have a turnaround constructed to within 50 feet of each dwelling unit.

3. Bridges

Driveway bridges shall be designed to the same standards as a private road bridge, except the width may be reduced to the width of the driveway.

4. Signing

Each driveway shall have an address placed at the driveway entrance where it intersects with the road. The address shall be visible from both directions of travel along the road. Driveways that serve more than one address shall have all the addresses mounted on a single post where the driveway intersects the road.

5. Vertical Clearance

Driveways shall be constructed to provide for a minimum vertical clearance of 15 feet.

IV. PUBLIC ROAD STANDARDS

Public road standards exceed the SRA requirements except for the radius of the a cul-de-sac. The radius of all public road cul-de-sacs should be increased from 35 feet to 40 feet to not only meet the SRA regulations, but to provide adequate room for the Fire Districts to turn around in the suburban and urban cul-de-sacs.

V. RURAL WATER SUPPLY STANDARDS - (to be determined at a later date)

VI. RURAL DEFENSIBLE SPACE STANDARDS - (to be determined at a later date)

VII. STRUCTURE SET BACK: - (to be determined at a later date)

VIII. FIRE RESISTANT AND DROUGHT RESISTANT LANDSCAPING STANDARDS (to be determined at a later date)

CONTRA COSTA COUNTY FIRE PROTECTION DISTRICTFIRE TRAIL ACCESS STANDARDS

I. Fire Trails

- A. Fire trails shall be graded packed earth 16 feet wide with 14 feet of vertical clearance.
- B. The surface shall provide unobstructed access to conventional drive vehicles, including sedans and fire engines and able to support emergency vehicle weights of 20 tons.
- C. The grade for fire trails shall not exceed 25 percent.
- D. Fire trails shall be graded to accommodate vehicles with an angle of departure of 14° minimum.
- E. Fire trails shall have an inside turning radius of 40 feet minimum whenever possible.
- F. Dead end fire trails shall have a staging area/turn around at least 80 feet in diameter.
- G. Fire trails shall offer turn outs 10 feet wide by 30 feet long every 1,200 feet along its length.

II. Fire Trail Access

- A. Access to fire trails through property shall be an unrestricted 16 feet wide clearance with 14 feet of vertical clearance.
- B. Any driveway or paved roadway used for access shall be engineered to support 20 tons of vehicle weight.
- C. Any fences or permanent obstructions shall have a 16 foot wide gate or opening fitted with a district fire trail lock or mechanism compatible with a fire trail barrel key.
- D. Fire trails shall be marked at gate or access points with a sign, as follows: "FIRE TRAIL - DO NOT BLOCK". Lettering to be at least six inches high.
 - 1. In addition, an unobstructed placement for a district fire trail number designation shall be provided.

III. New Developments

- A. When new development obstructs access to an open landscape or fire trail system, the developer shall provide alternate acceptable access into the area(s) as approved by the Fire District for fire personnel and equipment.
- B. New developments should dedicate easements to the Fire District to insure continued future access.
- C. Access to fire trails and open spaces shall be maintained throughout the development and construction phase.
- D. Curb cuts shall be provided by the developer/contractor to insure access to fire trails.

MINIMUM RESIDENTIAL ROAD STANDARDS

(NOTE: These are minimum requirements. Topography, safety, laws, ordinances, conditions of approval, or codes may require more restrictive standards.)

For purposes of this standard:

- Hierarchy of road surfacing (in descending order);
 - all weather (6" A.B.)
 - asphalt concrete (AC) (designed per T.I. & R valve) (2" A.C. over 6" A.B. minimum)
 - Portland Cement Concrete (PCC) (5 sack mix, 6" PCC over 6" A.B.), Rough Broom Finish
 - Grooved PCC

Road Grade vs. Road Surfacing:

<u>GRADE</u>	<u>SURFACING</u>
Less than 10%	Gravel
10% - 15.9%	AC or PCC
15.9% - 20% max	Grooved PCC

Road Width:

<u>WIDTH</u>	<u>RESTRICTIONS</u>
20 ft.	No parking.
28 ft.	Parking one side only. 28 ft. is also at fire hydrants for a 20 ft length with 2-25 ft tapers back to a 20 ft. width.
36 ft.	Parking two sides.

Approved turn arounds: Required for all roads longer than 150 ft from intersection.

Design Speed: 15 mph – 0 to 10 lots
 20 mph – more than 10 lots

Horizontal Curves: Designed for stopping sight distance (but not less than 60 feet). If the horizontal curve is less than 100 feet, the road width will be increased to 24 feet through the curve.

Vertical Curves: Designed for stopping sight distance (but not less than 100 feet).

Approvals: Fire District must sign all original (mylar) improvement plans prior to approval by the Public Works Department.

Wireless Facility Engineering Review

**Verizon Application for Site 248124 ("Alhambra Reliez")
814 Carter Acres Lane, Martinez, CA**

**Dieter J. Preiser, PMP
9/12/2012**



RCC Consultants, Inc. - Western Regional Office
266 E. 33rd Street, San Bernardino, CA 92404
909.881.0250 Tel, 909.881.8979 Fax

**Verizon Application for Site 248124 ("Alhambra Reliez")
814 Carter Acres Lane, Martinez, CA**

RCC Consultants, Inc. has been engaged by the City of Martinez to conduct a peer review, consistent with recognized industry standard practices, of the proposal from Verizon to construct and operate a new wireless base station facility at 814 Carter Acres Lane, Martinez, CA. RCC has performed many similar peer reviews for municipal clients throughout the US, including several in the San Francisco Bay area.

Surrounding Environment

The proposed site is located on a developed residential parcel approximately 750 feet southwest of the intersection of Reliez Valley Road and Carter Acres Lane. Figure 1 provides an aerial view of the vicinity.



Figure 1 - Aerial View of the Vicinity

Background

Verizon is licensed by the Federal Communications Commission to operate in portions of the PCS (1950 MHz), Cellular (870 MHz), and LTE (700 MHz) frequency bands. Verizon deploys CDMA technologies and most recently the new fourth generation (4G) LTE technology in its wireless infrastructure to deliver voice and data services. This application is for the construction and operation of a wireless facility at a co-location site to support services in these frequency bands using the technologies stated. The antennas are to be located on top of an existing 162.2 foot PG&E 230KV electric power transmission tower which is already used by T Mobile to support wireless systems.

Proposed Site Configuration

The applicant has proposed to install a 12-foot tower extension on the existing 162.2 foot PG&E transmission tower to support its antenna systems. Specifically Verizon is proposing to:

1. Install a total of nine (9) antennas in three sectors and ancillary equipment for CDMA and LTE services:
 - Sector A – three (3) each antennas with orientation of 130° at a height above ground
 - Sector B – three (3) each antennas with orientation of 270° at a height above ground
 - Sector C – three (3) each antennas with orientation of 340° at a height above ground
2. Two of the antennas in each sector will be Andrew, Model LNX-6515DS-VTM, with dimensions of 96.4 x 11.9 x 7.1 inches installed at an effective height of 170.2' at the center line, and one will be an Andrew, Model HBX-6517DS-VTN with dimensions of 74.9 x 6.6 x 3.3 inches installed at an effective height of 171.2' at the center line.
3. Equipment cabinets and GPS antenna will be located within a service area of 15'-8" x 30'-2" at the base of the tower.



Figure 2 – Antenna Installation Locations

Methodology

In conducting a peer review, RCC reviews and analyzes site application documents against wireless industry standards and best practices. In this case, RCC considered the application and supplemental materials submitted by Verizon, including the plans by Delta Groups Engineering, Inc., dated January 20, 2012, the RF report by Hammett and Edison, Inc., dated June 16, 2011, and the Alternatives Analysis, dated August 16, 2012 which also contains coverage maps, field tests data, and call failure data.

Justification for the Site Modification

Verizon claims a gap in coverage in the southwest portion of Martinez in the vicinity of the intersection of Alhambra Valley Road and Reliez Valley Road and areas south. As evidence of the gap, Verizon submitted a letter, dated June 29, 2012, from its RF Engineer, Stefano Iachella, which contains several technical exhibits. These included a map depicting modeled existing coverage (Exhibit A), a call failure map (Exhibit B), and a map showing drive test data (Exhibit C).

In its analysis of these exhibits, RCC noted that the closest existing Verizon site shown on these documents is approximately 1.15 miles northeast of the proposed site. Due to a range of hills blocking the signal path from the existing site, one would expect a coverage gap such as demonstrated by these exhibits in the subject areas around Alhambra Valley Road and Reliez Valley Road.

It is RCC's opinion that, based on the technical documents submitted, Verizon has demonstrated a coverage gap in its network in the area in terms of in-transit and in-building service, and that this gap will be substantially mitigated by the activation of service from the proposed site.

Alternatives

Verizon provided an analysis of each of the nine alternative sites in its report of August 16, 2012. Based on our analysis of the information presented and on RCC's experience in RF coverage design, we provide the following opinion:

- Alternative 1: Golden Hills Park, Bernice Lane

RCC Finding: This site is approximately 145' lower in elevation than the proposed site. The coverage to northwest of the site on Reliez Valley Road and Alhambra Valley Road would not be mitigated using a hypothetical 60' antenna structure height. A second site would have to be constructed to cover the northwest portion of the identified coverage gap. Therefore this site is not considered a viable alternative.

- Alternative 2: PG&E Tower, Briones Regional Park, East Bay Regional Park District

RCC Finding: From a RF coverage perspective, this would likely be a suitable site due to greater ground elevation compared to the proposed site. Also, it has better visibility toward the northern portion of Alhambra Valley Road. However, Verizon would incur substantial additional costs to develop the site and provide a compliant access road, electric power and fiber optic backhaul. Also, based on submitted correspondence, it appears the site owner, East Bay Regional Park District, would require a protracted review process.

- Alternative 3: PG&E Tower, East of Reliez Valley Road, Reliez Valley Road and Carter Acres Lane

RCC Finding: Verizon would incur substantial additional costs to develop the site and provide a compliant access road, electric power and fiber optic backhaul. Also, based on submitted correspondence, it appears that the site owner is not interested in leasing to Verizon. Therefore this site is not considered a viable alternative.

- Alternative 4: City of Martinez Water Tank, Alhambra Avenue

RCC Finding: Due to the remote location of this site in relation to the gap area and the intervening hills, this site is not a viable alternative to mitigate the identified coverage gap.

- Alternative 5: John Swett Elementary School 4955 Alhambra Valley Road

RCC Finding: Due to the remote location of this site in relation to the gap area and the intervening hills, this site is not a viable alternative to mitigate the identified coverage gap.

- Alternative 6: City of Martinez Water Tanks 5129 Chelsea Drive

RCC Finding: Due to the remote location of this site in relation to the gap area and the intervening hills, this site is not a viable alternative to mitigate the identified coverage gap.

- Alternative 7: City of Martinez Water Tank Stone Valley Court,

RCC Finding: Due to the remote location of this site in relation to the gap area and the intervening hills, this site is not a viable alternative to mitigate the identified coverage gap.

- Alternative 8: East Bay Municipal Utility District Water Tank, Sunrise Ridge Road,

RCC Finding: Due to the remote location of this site in relation to the gap area, this site will cover only the southern portion of the gap. An additional site would have to be constructed to cover Alhambra Valley Road in order to properly mitigate the identified coverage gap. Therefore, this site is not a viable alternative.

- Alternative 9: Utility Pole, Right-of-Way of Reliez Valley Road at Carter Acres Lane

RCC Finding: This site would only cover a small portion of the coverage gap due to height limitations associated with using a utility pole, even with a pole top extension. This site is not a viable alternative to mitigate the identified coverage gap.

Radio Frequency Emissions Safety

RCC has reviewed the report prepared by Hammett and Edison, Inc. on behalf of Verizon, dated June 16, 2011, and concurs with its conclusion that the proposed antenna installation will comply with the Federal Communications Commission's guidelines for radio frequency emissions exposure as detailed in their Office of Engineering & Technology Bulletin No. 65, "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields," August 1997 ("OET Bulletin 65"). Based on the OET Bulletin 65, the Maximum Permissible Exposure ("MPE") for the general population/uncontrolled exposure is 0.47 milli-Watt per square centimeter (mW/cm²) in the 700 MHz band (LTE), 0.58 milli-Watt per square centimeter (mW/cm²) in the Cellular spectrum, and 1 mW/cm² in the PCS spectrum. Permissible levels for exposure under occupational conditions, such as may be encountered by maintenance personnel, are five times higher.

Summary & Conclusion

RCC Consultants, Inc. is of the opinion that:

- Based on the coverage prediction maps, drive data and network incident data provided, Verizon has demonstrated a gap in in-transit and in-building coverage in the subject area which would be substantially mitigated by implementation of equipment at the proposed site.
- The proposed design is considered reasonable and consistent with industry best practices to fill coverage gaps in areas similar to the subject target area.
- The proposed site is the most viable of the listed alternatives to mitigate the identified coverage gap. Alternative Sites 2 and 8 would require construction of an additional site in the northwest portion of the identified coverage gap.
- The proposed installation will meet Federal Communications Commission guidelines pertaining to radio frequency emissions exposure to the general public.

Date: September 2, 2012

Dieter J. Preiser

Dieter J. Preiser, PMP

RESOLUTION NO. 071-01

AMENDING EXHIBIT "A" STANDARDS AND CRITERIA
FOR TELECOMMUNICATION FACILITIES

WHEREAS, the City Council received a request to amend the Resolution No. 130-97 Exhibit "A", Standards and Criteria to allow for consideration of applications for telecommunication facilities attached to an existing P.G.&E. transmission tower on properties designated Residential and Visually Significant; and

WHEREAS, the City Council approved Resolution No. 130-97, in September, 1997, adopting Exhibit "A", Standards and Criteria for Telecommunication Facilities ("Standards"), including policies and guidelines for processing applications for new telecommunication facilities; and

WHEREAS, City Council Resolution No. 130-97 anticipated that the Standards and Criteria would be updated from time to time; and

WHEREAS, the "Standards" prohibit approval of new permits for telecommunication facilities on lands designated Residential, Open Space and Conservation, and Visually Significant on the Martinez General Plan; and

WHEREAS, on March 27, 2001, the Martinez Planning Commission held a public hearing on the proposed amendment and unanimously recommended that the city Council adopt a Resolution Amending Resolution No. 130-97, Exhibit "A", Standard and Criteria; and

WHEREAS, in considering potential telecommunication facility sites, there appears to be at least one type of site which, due to the nature of development of electricity transmission facilities on poles or towers, may allow the installation of telecommunication facilities in a non-obtrusive manner; and

WHEREAS, if a proposed telecommunication facility can be established on such a site by attaching to existing improvements it may not have any additional impact on the visual quality of the site, and said application should be allowed to be considered for approval through the Use Permit and Design Review entitlement process which allows for the imposition of conditions of approval, in the same manner as the Standards and Criteria provide for other new telecommunication facilities.

WHEREAS, the city Council adopted a Negative Declaration in September 1997, which considered the potential impacts of the Telecommunication Ordinance and Standards and Criteria in the City of Martinez and no further environmental review is required.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the city of Martinez does hereby approve attached Exhibit "A", Amendment to Standards and Criteria for Telecommunication Facilities.

RESOLUTION NO. 071-01
EXHIBIT "A"

ADOPTING STANDARDS AND CRITERIA FOR
TELECOMMUNICATION FACILITIES

The City recognizes the public benefits that will accrue from the orderly development of telecommunication facilities which ensures open access to a broad range of competitive services for businesses, citizens, and public agencies. The city further recognizes the need to balance the convenience related to telecommunication services with the public interest regarding the siting, design, and operation of communications facilities. Therefore, the following Standards and Criteria have been prepared to provide clear guidelines for the efficient and effective processing of permit applications for new or expanded telecommunication facilities. Permit applications for telecommunication projects will be reviewed for conformance with these Standards and Criteria in addition to other City land use regulations such as the Martinez General Plan, or Martinez Municipal Code. Complete applications will be processed in the order received. Applications will be determined to be complete by the Community Development Department when accompanied by the following required information:

Material accompanying application - general requirements

- I. Development applications for telecommunication facilities shall be accompanied by the materials listed below in addition to other information specified herein and required for submittal with Use Permit and Design Review applications as set out in the Martinez Municipal Code. The Community Development Director may waive the requirement for submittal of any information described herein when determined that it is inapplicable based on project-specific factors. The Community Development Director may require additional information should it be deemed necessary based on project--specific factors.
 - A. An updated network facilities plan for the entire City (incorporated limits) and surrounding unincorporated areas within the City's sphere of influence, including the information listed below pertaining to the provision of service over the duration of the network plan and foreseeable future:
 1. A written description of the type of technology and type of consumer services the applicant will provide to its customers.
 2. A list enumerating the applicant's facilities sites, including existing sites, approved sites, proposed (applications filed and pending) sites, and planned (applications which the applicant is aware of at the time of filing the particular application but are not yet filed) sites for new, upgraded, and abandoned facilities. This information shall also describe the location, type and number of antenna and base transceiver stations at each site.
 3. A map(s) depicting the geographic location and boundaries of all coverage areas planned by the applicant and the location of the applicant's sites within each coverage area (sites should be identified on the map by numbers corresponding to the list referred to in Item IA(2) above).
 - B. A separate coverage area map and search ring for the proposed site, including the information described in Section IA(2) above as it pertains to the coverage area within which the proposed facility is sited. Topographic maps published by the United States Geologic Survey should be used to prepare base information for the service area maps.

The network and coverage area maps may be combined into a single map so long as the scale of the map is large enough to provide for size specific analysis within the coverage area boundaries. Applicants are encouraged to consult with the Community Development Department prior to submittal of permit applications for guidance regarding an acceptable format for the map information.

- C. Technical information, including but not limited to radio frequency radiation reports, visual analysis, alternative sites analysis, landscape plans, lighting plans, and architectural and engineering plans shall be prepared by an appropriate qualified professional acceptable to the Community Development Department.
- D. A copy any land use easement or restriction (open space, scenic resources, etc.) which encumbers the proposed facility site. Applications for shall include a copy of a title report or other legal instrument demonstrating legal access to the proposed facilities site.

Permit Duration

- II. Permit applications for wireless telecommunications facilities shall be valid for a period of up to ten (10) years from the date of final discretionary approval and may be renewed prior to expiration. Subsequent action by the City to approve, approve with additional conditions, or disapprove applications for renewal shall be based upon the policies, standards, and regulations in effect at the time of application for renewal is complete. Applications for renewal shall be submitted to the Community Development Department no later than thirty (30) days prior to expiration of the permit. Applications for renewal may be approved by the Community Development Director or designee. The permit may be renewed for up to nine additional years ten, 10 successive years) if the project is in complete compliance with adopted Standards and Criteria, and other pertinent City land use regulations such as the Martinez General Plan, Martinez Municipal Code. New or modified conditions of permit approval may be added if determined necessary by the Community Development Director. A permit may not be renewed if the facility is not upgraded to minimize its impacts, including land use compatibility, visual resources, public safety or other factors addressed by the California Environmental Quality Act (CEQA), to the greatest extent permitted by technology which exists at the time of renewal and is consistent with the provisions of adequate service at affordable rates.

Decisions made by the Community Development Director may be appealed to the Planning Commission in accordance with the provisions of the Martinez Municipal Code.

Location of Telecommunication Facilities - General Standards

- III. All wireless telecommunications facilities shall be sited to avoid or minimize land use conflicts by meeting the following standards.
 - A. No telecommunications facility shall be sited in a location where it will unreasonably interfere with the operation of Buchanan Field Airport and/or City utilities.
 - B. Location preference for telecommunication facilities should be given to publicly used structures, co-location and shared-location sites, and industrial or commercial sites. With the exception of co-locating on existing power poles, as indicated in Section III.D, below, telecommunication facilities shall not be permitted on Residential properties and on sites designated as visually significant in the Martinez General Plan. Applications for new

telecommunications facilities should avoid sites located near residential areas unless the applications include information sufficient to demonstrate: the location and type of preferred sites which exist within the proposed or technically feasible coverage area; that good faith efforts and measures were taken by the applicant to secure such preferred location sites; specific reasons why such efforts and measures were unsuccessful; specific reasons why the location of the proposed facility site is essential to meet the service demands of the carrier. The information required by this standard may be incorporated into the information required by Section IV (A) below.

- C. Telecommunication facilities shall be attached, sited adjacent to existing structures or sited on existing poles unless the applicant demonstrates to the satisfaction of the City that no other technically feasible site exists or that construction of a freestanding facility on or at a distant location from an existing structure will minimize adverse effects related to land use compatibility, visual resources, public safety, and other environmental factors addressed by CEQA. Appropriate types of existing structures may include, but not be limited to: buildings, water tanks, telephone and utility poles, signage and sign standards, traffic signals, light standards, and roadway overpasses.
- D. Telecommunication facilities, especially monopoles shall not be located in residential, agricultural, visually significant or designated open space and conservation areas, except where antennas can be attached to existing power poles/towers and other existing public utility structures and where ground mounted equipment is located within the envelope created by the "legs" of the existing tower and no other feasible alternative exists.

IV. "Co-location" means a telecommunication facility comprised of a single structure used to support multiple antenna operated by different carriers. "Shared-location" means more than one telecommunication facility comprised of multiple structures used to support equipment or antenna operated by one or more carriers where such structures are located within proximity to each other.

Co-location and shared-location of telecommunication facilities should be encouraged when it is feasible and minimizes adverse effects related to land use compatibility, visual resources, public safety, and other environmental factors addressed by CEQA. Co-location and shared-location sites should not be required when it creates or significantly increases such adverse effects and/or technical evidence demonstrates to the satisfaction of the City that it is not feasible due to service impairment or operational failures. The following standards should be met to ensure the proper implementation of co-location and shared-location siting:

- A. To ensure adequate and complete consideration of co-location and shared-location siting of proposed telecommunication facilities, the applicant may be required to submit to the City a graphic and written analysis which identifies all technically feasible and commercially reasonable available sites within the search ring that would accommodate the proposed service. The analysis shall include enough information to provide adequate consideration of technically feasible alternative sites and /or facility designs that would avoid or minimize adverse effects related to land use compatibility, visual resources, public safety, and other environmental factors addressed by CEQA. The analysis shall also include in writing the specific factors for selection of the proposed facility site over alternative sites. Facilities which are not proposed to be sited on a co-location and shared-location site shall provide information

substantiating the unfeasibility of such sites. The City may require independent peer review of the analysis prior to making a decision on the permit application. The analysis should, to the extent practical, be incorporated with the coverage area map required by section I B above.

- B. The City should to the extent practicable and legal discourage leases which convey exclusive (i.e., single user) rights for new telecommunication facilities to the extent that such leases may preclude development of a suitable co-location facilities.
- C. The design of co-location sites should promote shared use among different carriers. To the extent feasible, antenna support and equipment structures should be designed to consolidate future planned facilities to eliminate or minimize the visual clutter resulting from multiple telecommunication structures. Where appropriate, as demonstrated by the applicant and determined by the city, multiple antenna support structures may be approved (shared location) rather than a single larger/higher structure.
- D. Facilities should make available unutilized space for co-location of other antennas and equipment, including space for competing service carriers.

Radio Frequency Radiation

- V. 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).
- VI. Applications for telecommunication facilities shall include a RFR report which measures the predicted and actual (if available) levels of RFR radiation emitted by the proposed facility operating at by itself and in combination with other existing or approved facilities which can be measured at the proposed facility site. Measurement for RFR shall be based on all proposed, approved, and existing facilities operating at maximum power densities and frequencies. 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.

Lighting

- VII. Telecommunication facilities should be unlit except for the following:
 - A. Manually operated, low wattage, hooded and downward directed exterior lighting shall be permitted for safety purposes only and shall be kept off 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. Applications for telecommunication facilities shall include a detailed lighting plan including the location and type of all exterior lighting fixtures.

Roads and Accessways

- IX. Telecommunication facilities shall be served by existing access roads and parking areas, as necessary.

Vegetation

- X. Telecommunication facilities shall be installed in a manner that maintains and enhances existing vegetation. Where appropriate, additional landscaping shall be required to provide visual screening of the proposed facility. Vegetation protection and facility screening shall be accomplished through the following measures:
- A. Applications for telecommunication facilities shall be accompanied by a landscape plan that shows existing vegetation, indicates any vegetation proposed for removal or trimming, and identifies proposed planting by type, size, and location. Cross sections of the antenna/structure to be screened and the height of the proposed plant material at one year, two years, five years and full growth shall be indicated on the landscape plans. The emphasis of the landscape plan should be to visually screen the proposed facility and stabilize soils on sloping sites. Introduced vegetation shall be native, drought tolerant species compatible with the predominant natural setting of the project area.
 - B. In some areas, particularly in areas with little vegetation, the required landscaping shall be determined in the field after the antennas/equipment have been installed to determine the amount and type of screening necessary.
 - C. Existing trees and other screening vegetation in the vicinity of the proposed facility and associated access way shall be protected from damage both during and after construction. Submission of a Tree Protection Plan shall be required to ensure compliance with this requirement, where applicable.
 - D. All vegetation disturbed during project construction shall be replanted with compatible vegetation and soils disturbed by development shall be reseeded to control erosion.
 - E. No vegetation shall be removed subsequent to project completion except to comply with local and State fire safety regulations, to prevent the spread of disease as required by the State Food and Agriculture Department, or to prevent safety hazards to people and property.
 - F. Where appropriate, the applicant shall enter into a landscape performance and maintenance agreement with the City of Martinez to ensure the installation and establishment of required landscaping. This agreement shall be secured by financial securities in an amount equal to 150 percent of estimates to cover the cost of materials and labor for required improvements. The duration of the landscape maintenance agreement shall be for a minimum period of no less than two years and may be extended for an additional period of up to two additional years upon renewal of the permit applications.

Noise and Traffic

- XI. Telecommunication facilities shall be constructed and operated in such a manner as to minimize noise and traffic impacts on nearby residents and the public. Noise and traffic reduction shall be accomplished through the following measures:

- A. Telecommunication facilities shall operate in compliance with the noise exposure standards contained in the Martinez General Plan. In residential areas, a maximum allowable exterior noise level of 60dB Ldn at the property line and a maximum interior noise level of 45 dB Ldn shall not be exceeded.
- B. Normal testing and maintenance activities that create material noise and traffic impacts 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 telecommunication and maintenance equipment that is audible from residences and other nearby sensitive receptors may occur at all other times. The level of any equipment used in routine maintenance and repairs shall not exceed the City standards at any adjacent property line.
- C. 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 XI.B. above.
- D. Traffic resulting from the operation and maintenance of a telecommunication facility shall be kept to a minimum. Conditions of project approval shall specify a maximum number of trips on a case-by-case basis based upon the carrier's maintenance and testing schedule.
- E. Applications for telecommunication facilities shall include a copy of a title report or other legal instrument demonstrating legal access to the proposed facility.

Visual Compatibility and Facility Site Design

XIII. Applications for telecommunication facilities structures and equipment shall be sited, designed, and screened to blend with the surrounding natural or built environment in order to reduce visual impacts to the maximum extent feasible. Visual compatibility shall be accomplished through the following measures.

- A. Applications for telecommunication facilities shall include a visual analysis of the proposed facility at design capacity, including but not necessarily limited to a photo montage or photo simulator and/or story poles erected at the proposed site or other similar technique. The visual analysis shall address views from public vantage points and private residents if determined appropriate by the City. The visual analysis shall also depict cumulative conditions by including information pertaining to existing, approved, and proposed telecommunications facilities that will or may eventually be constructed at the site by all carriers based upon permit applications which have been filed with or approved by the City. The visual analysis may be expanded to exclude alternative locations within the proposed service area.
- B. To the extent feasible, all building-mounted telecommunication facilities shall be sited and designed to appear as an integral part of the structure or otherwise minimize their appearance.
- C. Wall-mounted antennas shall be integrated architecturally with the style and character of the structure or otherwise made as unobtrusive as possible. If possible, antennas shall be located entirely within an existing or newly-created architectural feature so as to be completely screened from view.

- D. Roof-mounted antennas and associated equipment should be located as far back from the edge of the roof as possible, so as to minimize visibility from street level locations, except for facade-mounted antennas which can be integrated into the design of the building or the visual impact can otherwise be minimized. Where appropriate, construction of a roof-top parapet wall to hide the facility may be required.
- E. Whenever possible, base stations, equipment cabinets, back-up generators, and other equipment associated with building mounted or other antennas or equipment, shall be installed within the existing building envelope or underground. When possible, if the rooftop equipment is visible from offsite, the equipment shall be placed within the well of the roof. If this is not feasible, the equipment shall be painted, screened, fenced, landscaped or otherwise treated architecturally to minimize its appearance from off-site locations and to visually blend with the surrounding natural and build environment. Equipment buildings shall be designed in an architectural style and constructed of exterior building materials that are consistent with surrounding development and/or land use setting.
- F. In certain hillside locations that would be generally visible from a distance, it may be appropriate to design facilities that blend with surrounding existing natural and man-made features in such a manner as to be effectively unnoticeable or visually unobtrusive.
- G. Facilities shall not be located on historically or architecturally significant structures unless visually and architecturally integrated with the structure, and should not interfere with prominent vistas or significant public view corridors.
- H. Facilities shall be sited to avoid adverse impacts to existing views from surrounding residences.
- I. No advertising signage or identifying logos shall be displayed on any personal telecommunications facility, except for small identification plates used for emergency notification.
- J. To avoid or minimize the appearance of visual clutter on rooftops, proposed facilities shall, to the extent feasible, be located adjacent to existing rooftop antennas or equipment incorporated into rooftop antenna or equipment enclosures, or otherwise screened from view. In addition, existing rooftop antenna and equipment should be consolidated where practical and removed if abandoned.
- K. Applicants must demonstrate that facilities have been designed to attain the minimum height required from a technological standpoint for the proposed site.
- L. Antennas and associated structures and equipment shall be painted to blend with the structures, vegetation, sky, or landscape against which they will be primarily viewed.
- M. Applicants for telecommunication facilities shall be required to enter into a standard performance agreement with the city which includes the following stipulations:
 - 1. The applicant (and successor in interest) shall properly maintain and ultimately remove, if required, the approved facilities in compliance with the provisions of these Standards and Criteria and any conditions of permit approval. The carrier shall post a financial security, such as a letter

of credit, bond or corporate guarantee, which is acceptable to the City to ensure that the approved facility is properly maintained and to guarantee that the facility is dismantled and removed from the premises if it has been inoperative or abandoned for a two-year period, or upon expiration of the permit applications.

Posting of a financial security may also be required as a condition of approval to pay the cost for preparation of electromagnetic frequency radiation reports evaluating the conformance of approved and operative facilities with applicable health standards adopted by the Federal Communications Commission. 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.

2. The carrier shall defend, indemnify, and hold harmless the City and any of its boards, commissions, agents, officers, and employees to attack, set aside, void, or annul the approval of permit applications when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The City shall promptly notify the carrier of any such claim, action, or proceeding. The City shall retain the right to participate in any claim, action, or proceeding if the City bears its own attorney's fees and costs and the City defends the action in good faith.

Indemnification

- XIV. The applicants shall defend, indemnify, and hold harmless the City and any of its boards, commissions, agents, officers, and employees from any claims, actions, or proceedings brought to attack, set aside, void, or annul the approval of permit applications when such claim or action is brought within the time period provided for in applicable state and/or local statutes. 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 if the City bears its own attorney's fees and costs and the City defends the action in good faith.

§ 332. Mobile services, 47 USCA § 332

United States Code Annotated
Title 47. Telegraphs, Telephones, and Radiotelegraphs
Chapter 5. Wire or Radio Communication (Refs & Annos)
Subchapter III. Special Provisions Relating to Radio (Refs & Annos)
Part I. General Provisions

47 U.S.C.A. § 332

§ 332. Mobile services

Effective: February 8, 1996

[Currentness](#)

(a) Factors which Commission must consider

In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with [section 151](#) of this title, whether such actions will--

- (1) promote the safety of life and property;
- (2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;
- (3) encourage competition and provide services to the largest feasible number of users; or
- (4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of [part III of Title 5](#) or [section 1342 of Title 31](#).

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

(c) Regulatory treatment of mobile services

(1) Common carrier treatment of commercial mobile services

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this chapter, except for such provisions of subchapter II of this chapter as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of [section 201](#), [202](#), or [208](#) of this title, and may specify any other provision only if the Commission determines that--

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of [section 201](#) of this title. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this chapter.

(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after August 10, 1993, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) Non-common carrier treatment of private mobile services

A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this chapter. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to August 10, 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State preemption

(A) Notwithstanding sections 152(b) and 221(b) of this title, no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that--

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after August 10, 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) Regulatory treatment of communications satellite corporation

Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 [47 U.S.C.A. § 741 et seq.] of the corporation authorized by title III of such Act [47 U.S.C.A. § 731 et seq.].

(5) Space segment capacity

Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) Foreign ownership

The Commission, upon a petition for waiver filed within 6 months after August 10, 1993, may waive the application of

section 310(b) of this title to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b) of this title.

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions

For purposes of this paragraph--

(i) the term “personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term “personal wireless service facilities” means facilities for the provision of personal wireless services; and

(iii) the term “unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in [section 303\(v\)](#) of this title).

(8) Mobile services access

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers’ choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers’ choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) Definitions

For purposes of this section--

(1) the term “commercial mobile service” means any mobile service (as defined in [section 153](#) of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

(2) the term “interconnected service” means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B) of this section; and

(3) the term “private mobile service” means any mobile service (as defined in [section 153](#) of this title) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

Credits

(June 19, 1934, c. 652, Title III, § 332, formerly § 331, as added Sept. 13, 1982, [Pub.L. 97-259, Title I, § 120\(a\)](#), 96 Stat. 1096; renumbered § 332, Oct. 5, 1992, [Pub.L. 102-385, § 25\(b\)](#), 106 Stat. 1502; amended Aug. 10, 1993, [Pub.L. 103-66, Title VI, § 6002\(b\)\(2\)\(A\)](#), 107 Stat. 393; Feb. 8, 1996, [Pub.L. 104-104, § 3\(d\)\(2\)](#), Title VII, §§ 704(a), 705, 110 Stat. 61, 151, 153.)

[Notes of Decisions \(299\)](#)

§ 332. Mobile services, 47 USCA § 332

47 U.S.C.A. § 332, 47 USCA § 332

Current through P.L. 112-139 approved 6-27-12
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RESOLUTION NO. -12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARTINEZ
DENYING AN APPEAL AND APPROVING PERMIT #12PLN-0002
ALLOWING A NEW CO-LOCATED WIRELESS TELECOMMUNICATIONS
FACILITY ON AN EXISTING PG&E TOWER, LOCATED 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 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, Martinez, California, at Title 22- "Zoning" ("Zoning Ordinance"), Chapter 22.12 "Residential Districts", Chapter 22.24 "Environmental Conservation Districts", and Chapter 22.39 "Wireless Telecommunications Facilities" - §22.39.050(3) requires Use Permit and Design Review approval by the Planning Commission to permit a wireless telecommunications facility; and

WHEREAS, the Planning Commission approved the applicant's (Verizon Wireless) application for Use Permit and Design Review - Permit #12PN-0002 with certain conditions of approval at a duly noticed and held public hearing on April 24, 2012; and

WHEREAS, on May 4, 2012, the appellants (Simone St. Clare and Christine Scharmer) filed a timely appeal of the Planning Commission's decision with the City of Martinez; and

WHEREAS, the City Council held a duly noticed public hearing on July 11, 2012, continued to July 25, 2012, and continued to September 19, 2012 to consider the appeal and considered public testimony on the matter and all other substantial evidence in the record; and

WHEREAS, the City Council as part of its public hearing imposed certain Conditions of Approval on the Project for the Use Permit and Design Review - Permit #12PLN-0002 which are required for the Project; and

WHEREAS, the Record of Proceedings ("Record") upon which the City Council bases its decision regarding the Project includes, but is not limited to: (1) all staff reports, City files and records and other documents prepared for and/or submitted to the Planning Commission and the City relating to the Project, (2) the evidence, facts, findings and other determinations set forth in this resolution, (3) the City of Martinez General Plan and the Martinez Municipal Code, (4) all applications, designs, plans, studies, data and correspondence submitted by the applicant in connection with the Project, (5) all documentary and oral evidence received at public hearings or submitted to the City relating to the Project, (6) all other matters of common knowledge to the City Council including, but not limited to, City, state and federal laws, policies, rules regulations, reports, records and projections related to development within the City and its surrounding areas.

NOW, THEREFORE, the City Council of the City of Martinez resolves and finds 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) 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.

- 3) 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. The City Council hereby makes the following findings with respect to the General Plan:

(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.

- 4) 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), which it hereby does:

- (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. 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. 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.

- 5) 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), 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.**

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 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% and at a second floor elevation to 0.19%, of the applicable FCC standard for limiting public exposure to radio frequency energy. 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.

- (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.

- (1) **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.

- 6) The City Council hereby makes the following findings with respect to the Appeal:

(a) **Appeal Issue #1**

Allegation of the Appeal Issue #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 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 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."*

Finding to Deny Appeal Issue #1: The notice of public hearing was clear, and definite, stating that the public hearing was to consider the Project. The notice also provided information on the CEQA proposed environmental determination and finding for the Planning Commission to adopt. The Planning Commission approved the Project based on findings in the Resolution #12-01.

Facts in Support of Finding: 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. The Planning Commission approved the Project based on findings in the 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 radio frequency (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.

(b) Appeal Issue #2

Allegation of the Appeal Issue #2: *"The Federal Communications Act of 1996 does NOT preempt the City from considering the permit."*

Finding to Deny Appeal Issue #2: The Telecommunications Act of 1996 does not preempt the City of Martinez from considering the Project, but the statute preempts local decisions premised directly or indirectly on the environmental effects of RF emissions, if the provider is in compliance with FCC's RF rules.

Facts in Support of Finding: 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.

(c) **Appeal Issue #3**

Allegation of the Appeal Issue #3: *"The permit is not exempt from CEQA."*

Finding to Deny Appeal Issue #3: 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.

Facts in Support of Finding: 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.

(d) Appeal Issue #4

Allegation of the Appeal Issue #4: *"The permit violates Martinez regulations and ordinances, especially given the subject property is located in an Environmental Conservation District."*

Finding to Deny Appeal Issue #4: Section 22.39.050 of the Martinez Municipal Code 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 an existing, operating wireless facility at the subject property, the same site for which this co-location is sought.

Facts in Support of Finding: 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.

(e) **Appeal Issue #5**

Allegation of the Appeal Issue #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."*

Finding to Deny Appeal Issue #5: 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 State of California Government Code §65091.a.4. 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.

Facts in Support of Finding: 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.

(f) **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.

BE IT FURTHER RESOLVED that based on the findings set forth above and the Record as a whole, the City Council hereby denies the appeal and approves Use Permit and Design Review application Permit #12PLN-0002, subject to conditions of approval attached hereto as Exhibit A and incorporated herein by this reference.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 19th day of September, 2012, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

CONDITIONS OF APPROVAL

AS APPROVED BY CITY COUNCIL

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. 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 B 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 September 19, 2012.
- B. The applicant may apply to extend the expiration date, September 19, 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.

- C. 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.
- D. 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.
- E. 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).
- F. 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 City Council'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.
- G. 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.
- H. In the event that a claim, action or proceeding described in item F, 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 be 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.

- I. 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.
- J. 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\CC\Sept 19 2012 CC Meeting\Verizon Wireless Appeal COA Exhibit A Sept 19 CC Meeting.doc

MACKENZIE & ALBRITTON LLP

220 SANSOME STREET, 14TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415 / 288-4000
FACSIMILE 415 / 288-4010

September 13, 2012

VIA EMAIL

Mayor Rob Schroder
Vice Mayor Mark Ross
Councilmembers Lara DeLaney,
Janet Kennedy and Michael Menesini
City Council
City of Martinez
525 Henrietta Street
Martinez, California 94553

Re: Verizon Wireless Telecommunications Facility
814 Carter Acres Lane, Application 12PLN-0002P
City Council Agenda September 19, 2012

Dear Mayor Schroder, Vice Mayor Ross and Councilmembers:

We write to you on behalf of our client Verizon Wireless with respect to the above-captioned proposed collocation wireless facility on a PG&E transmission tower (the "Approved Facility") heard by you on appeal on July 11, 2012. At the appeal hearing, you asked Verizon Wireless to take a fresh look at its Alternatives Analysis and that the Alternatives Analysis be reviewed by a third party professional engineer. Verizon Wireless completed a thorough analysis of ten potential alternatives to the Approved Facility and in August submitted its Alternatives Analysis to the City of Martinez (the "City") complete with propagation maps and correspondence from landowners.¹ The independent engineering review of this analysis by RCC Consulting, Inc. was received by the City this week and concludes that the Verizon Wireless proposal is "the most viable of the listed alternatives to mitigate the identified coverage gap."² Based upon the revised Alternatives Analysis provided by Verizon Wireless, the clear conclusion of the independent engineer, the recommendation of the Design Review Committee, the approval of the Planning Commission and Planning Division staff's consistent recommendation for approval, we encourage you to reject the largely "procedural" appeal of Simone St. Clare and Christine Scharmer ("Appellants") and approve the Approved Facility.

¹ Verizon Wireless's revised Alternatives Analysis is Attachment 1 to the Staff Report for the September 19, 2012 City Council meeting.

² See *Wireless Facility Engineering Review*, RCC Consulting, Inc., September 12, 2012, p. 7, which is Attachment 2 to the Staff Report.

Given the general dismissal of appellants' procedural grounds for appeal by the report of Planning Division staff, the City Attorney, and seemingly the City Council at the July 11, 2012 appeal hearing, this letter briefly addresses the applicable federal law, which compels approval of the Approved Facility.

I. Substantial Evidence for Approval and Lack of Substantial Evidence for Denial Compel Rejection of the Appeal under 47 U.S.C. §332(c)(7)(B)(iii)

Federal law requires that any denial of a wireless facility must be "supported by substantial evidence contained in a written record." 47 U.S.C. §332(c)(7)(B)(iii). Federal courts have interpreted the substantial evidence requirement to require facts consistent with local regulations to support denial and that generalized objections are insufficient to constitute substantial evidence upon which a local government could deny a permit. *See City of Rancho Palos Verdes v. Abrams*, 101 Cal.App.4th 367, 381 (2002).

As set forth in our prior correspondence, Appellants base their arguments entirely on procedural issues and fail to submit any evidence of any land use impacts from the Approved Facility that could constitute the substantial evidence required of the City Council under federal law to deny the Approved Facility. As confirmed by Planning Division staff, the appellants' claim that the City must complete an Environmental Impact Report for the Approved Facility is a misinterpretation of the Martinez Code of Ordinances (the "Code") and ignores the incorporation of CEQA guidelines and exemptions under the Code. Staff is correct in applying the CEQA Class 1 and Class 11 exemptions to the Approved Facility.

In contrast, and as confirmed by Planning Division staff, Verizon Wireless has provided ample evidence to support the Approved Facility including its compliance with specific permitting requirements under Code §22.49.060 as reflected in Standards and Criteria for Telecommunications Facilities §III.D. These requirements allow antennas to be located on a transmission tower with associated equipment located beneath the tower in a residentially-zoned conservation area, and create a specific preference where, as here, a facility is collocated with an existing wireless telecommunications facility.

Further, as noted and confirmed by the independent engineering analysis, the site fully complies with FCC emissions guidelines and noise control requirements under the Code. In sum, Verizon Wireless has provided ample evidence for approval while Appellants have failed to submit any evidence of any land use or other impacts that would justify denial of the Approved Facility under federal law.

II. Approval of the Approved Facility and Rejection of the Appeal Avoid Unlawful Discrimination under 47 U.S.C. §332(c)(7)(B)(i)(I)

A local jurisdiction may not unreasonably discriminate in the granting of wireless facility permits between functionally equivalent wireless providers. Unreasonable discrimination occurs where a wireless provider shows that its denied facility has been treated differently from a similarly situated facility previously approved by the jurisdiction. Where Verizon Wireless antennas will be mounted to the same transmission tower as the previously approved T-Mobile facility and where the associated equipment will be placed below and within the same tower footprint as the T-Mobile facility, denial of the Verizon Wireless application for the Approved Facility would clearly constitute unreasonable discrimination under 47 U.S.C. §332(c)(7)(B)(i)(I).

III. Federal Law Prohibits Denial of the Approved Facility Based on the Environmental Effects of Radio Frequency Emissions or Any Proxy such as Property Values under 47 U.S.C. §332(c)(7)(B)(iv)

Testimony at the July 11, 2012 appeal hearing confirmed that immediate neighbors oppose the Approved Facility based upon unfounded fears of radio frequency emissions and their alleged effect on property values. As this Council well knows, local jurisdictions are prohibited from denying facilities based on the environmental effects of radio frequency emissions where, as here, the applicant has shown that the Approved Facility will fully comply with Federal Communications Commission emissions guidelines.³ In light of the federal preemption of radio frequency regulation, “concern over the decrease in property values may not be considered as substantial evidence if the fear of property value depreciation is based on concern over the health effects caused by RF emissions.” *See AT&T Wireless Services of California LLC v. City of Carlsbad*, 308 F.Supp.2d 1148, 1159 (S.D. Cal. 2003).

IV. City Expert’s Review Confirms that Denial of Approved Facility Would Constitute a Federally-Preempted Prohibition of Verizon Wireless Service under 47 U.S.C. §332(c)(7)(B)(i)(II)

Under federal law, a wireless provider has established a “*prima facie*” case for prohibition of service where it has identified a significant gap in coverage and shown that a proposed facility is the least intrusive means to fill that gap. *See T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987 (9th Cir. 2009). Here, the City’s independent consultant has confirmed that Verizon Wireless has established such a *prima facie* case.

³ The Hammett & Edison, Inc., Consulting Engineers report dated June 16, 2011 confirms that emissions anywhere on the ground adjacent to the Approved Facility will—cumulatively with the T-Mobile facility—be 0.16% of the public exposure limit.

City Council
City of Martinez
September 13, 2012

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Consequently, granting of the appeal would constitute a prohibition of service in violation of 47 U.S.C. §332(7)(B)(i)(II).

Conclusion

Through the statement of its radio frequency engineer and an exhaustive Alternatives Analysis, Verizon Wireless has shown thorough and careful diligence in identifying the least intrusive means of filling a significant gap in its coverage along Reliez Valley Road and Alhambra Valley Road in Martinez. Wireless coverage along these thoroughfares (averaging 150 vehicle trips per hour), in surrounding residential neighborhoods and for use by the Martinez police and the Contra Costa County Fire Protection District is essential to the health, safety and welfare of all Martinez residents. We encourage you to reject the appeal of immediate neighbors and approve the placement of this vital communications infrastructure.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton", with a stylized flourish at the end.

Paul B. Albritton

cc: Veronica Nebb, Esq., Senior Assistant City Attorney
Anjana Mepani, Associate Planner



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