



PC 2/25/16  
#4  
2 pages

Charlene Tim <charlene.tim@edcgov.us>

---

**Fwd: SpecialUse Permit S15-0004/Verison Wireless Communication Facility Arrowbee Monopine**

---

Planning Unknown <planning@edcgov.us>  
To: Charlene Tim <charlene.tim@edcgov.us>

Tue, Feb 23, 2016 at 8:13 AM

Please see public comment email.

----- Forwarded message -----

From: Iona Merideth <imreteam@gmail.com>  
Date: Mon, Feb 22, 2016 at 8:21 PM  
Subject: SpecialUse Permit S15-0004/Verison Wireless Communication Facility Arrowbee Monopine  
To: planning@edcgov.us

Please include this letter from Pauline and Ken McClean in the public comments. Thank you

-

**Iona Merideth, Broker**

**Merideth Realty Inc.**

916-235-7770 Office M-F only  
916-834-6873 Cell  
888-591-7110 fax  
[www.myfolsomagent.com](http://www.myfolsomagent.com)

---

 cell tower lette - McClean.docx  
19K

El Dorado County Planning Commission  
Rich Stewart, Chair, District 1  
Gary Miller, First Vice Chair, District 2  
Brian Shinault, Second Vice-Chair, District 5  
James Williams, District 4  
Jeff Hansen, District 3

**Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole”**

**Dear El Dorado County Commissioners,**

**We are apposed to a cell tower at this designated site due to the loss of value to the homes in the surrounding neighborhoods and the risk of health issues. There must be plenty of places that do not include a beautiful lake setting where a tower can be placed. We respectively request that you review your plans for this tower location.**

**I strongly request that you reject and deny the “Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole”.**

**Respectfully submitted,**

**Ken McClean  
Pauline McClean  
1320 Burnt Shanty Creek Road  
Placerville CA 95667**

PC 2/25/16

#4

2 pages

Charlene Tim <charlene.tim@edcgov.us>



---

## Fwd: SUP S15-0004 Comment

---

**Aaron Mount** <aaron.mount@edcgov.us>  
To: Charlene Tim <charlene.tim@edcgov.us>

Tue, Feb 23, 2016 at 8:17 AM

**Aaron Mount**  
Associate Planner

**County of El Dorado**  
Community Development Agency  
Planning Services  
2850 Fairlane Court  
Placerville, CA 95667  
(530) 621-5355 / FAX (530) 642-0508  
aaron.mount@edcgov.us

----- Forwarded message -----

From: **Jim Ware** <jware@dokkenengineering.com>  
Date: Tue, Feb 23, 2016 at 8:09 AM  
Subject: SUP S15-0004 Comment  
To: "aaron.mount@edcgov.us" <aaron.mount@edcgov.us>, "roger.trout@edcgov.us" <roger.trout@edcgov.us>

Good Morning Aaron and Roger,

I have prepared a comment letter in response to the referenced project.

Please let me know if you have any questions.

Jim Ware  
jameswware@outlookcom

---

 **Cell Tower Letter to EDC CDA.pdf**  
68K

Arrowbee Road Zone

February 23, 2016

County of El Dorado Community Development Agency  
Development Services Division-Planning Services  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Aaron Mount, Roger Trout  
RE: Special Use Permit S15-0004  
Verizon Wireless Communication Facility Arrowbee Monopine

The Arrowbee Road Zone advisory committee has received notification of the proposed project and has the following comments:

The Arrowbee Road Zone is responsible for the maintenance and upkeep of the public roads within the zone utilizing a supplemental assessment paid by the individual property owners through an assessment on their property taxes. The fund is maintained by the County Auditor as the assessments collected through property taxes are public money. All projects advanced by the road zone are required to follow the public contracting code, to include paying prevailing wages. All payments to the contractors that perform the capital work are made by the County from funds in the Arrowbee road zone account. Much of the maintenance and emergency work on the zone roads is performed by volunteers that live within the community.

The question of whether or not to recommend or protest the proposed communication facility is outside the purview of this advisory committee.

However, the proposed project will have direct negative impacts on the roadway system within the road zone. Those impacts should be mitigated by the applicant(s) if this project is approved by the County.

The road zone advisory committee requests that if this project is approved as proposed, it be conditioned to pay a sum of \$1,000 per year to County Auditor and be credited to the Arrowbee road zone account. Furthermore, the advisory committee requests that the assessment amount be increased by \$500 per year for each additional tenant that co-locates onto the communication facility. These funds will then be used to perform the ongoing maintenance of the roadways within the road zone.

Thank you for considering this comment regarding this project located within our community and its impacts onto our roadway system. Please contact me if you have any questions.

Jim Ware,



Chair, Arrowbee Road Zone

[JamesWWare@outlook.com](mailto:JamesWWare@outlook.com), Cell 916-934-6448, Home 530-622-9226



PC 2/25/16  
#4

Charlene Tim &lt;charlene.tim@edcgov.us&gt;

---

**Fwd: Lake Arrowbee Cell tower proposal**

---

**Planning Unknown** <planning@edcgov.us>  
To: Charlene Tim <charlene.tim@edcgov.us>

Tue, Feb 23, 2016 at 11:15 AM

Please see public comment email.

----- Forwarded message -----

From: **Dwight Hastings** <dhastings95667@yahoo.com>  
Date: Tue, Feb 23, 2016 at 11:10 AM  
Subject: Lake Arrowbee Cell tower proposal  
To: "planning@edcgov.us" <planning@edcgov.us>

Hello, my name is Dwight Hastings and I have been living in Lake Arrowbee for 21+ yrs. One of the reasons for moving there was the picturesque lake area and the country feel. I am alarmed and dismayed that a cell tower, which will be huge, will be positioned right over the lake. I will unfortunately see it right outside my bedroom window when I look towards the lake. This will greatly impact my quality of life as I live here to get away from items such as this, the community and have a great financial impact to home values. Basically, who would want to live with that overlooking and interrupting the pristine views of the area? Not to mention the low level noise it produces.

It is really hard to believe that in this day and age one person can make a decision that impacts so many. And that a government entity would allow it to happen. I sincerely hope you do not approve this project and that you encourage a proposal to be submitted in an area without so many homes that would be impacted. Thank you for your time.

Sincerely,  
Dwight Hastings

PC 2/25/16  
#4  
8 pages

February 23, 2016

County of El Dorado Community Development Agency  
Development Services Division-Planning Services  
2850 Fairlane Court  
Placerville, CA 95667

16 FEB 23 AM 11:49  
RECEIVED  
PLANNING DEPARTMENT

RE: S15-0004 Arrowbee Lake Verizon Cell Tower

Dear Commissioners,

I am a retired licensed architect, Cal Poly School of Architecture (1975). I also held a General Building Contractor license and was a Certified Professional Estimator. Throughout my career I had key roles in both private and public projects which ranged in cost from several hundred thousand dollars to almost three hundred million dollars. Much of my career was spent managing Architectural and Engineering consultants and performing technical reviews of project documents. I mention this only to demonstrate my experience reviewing project documents.

As a resident of the Lake Arrowbee neighborhood, I was naturally interested in looking at the project documents for the proposed cell tower. After an initial brief look, I conducted a more thorough review of all of the documents, consultant reports and plans that I was able to obtain as of February 22, 2016. Once I began studying them, it became apparent that the documents were poorly prepared. Written application documents and questionnaires were inconsistent with consultant reports and the actual plans, containing numerous factual errors and omissions. It seemed clear that the Applicant has produced many such applications and merely cut and pasted from one project to the next without doing an adequate review. I have attached a table summary of my review. This is not all-inclusive and I have eliminated duplicate comments for brevity; some are minor points, some are substantial.

There is one finding (Item 15) in particular I would like to call to your attention; the disappearance from the final set of plans dated 12-2-2015 of the location of a second septic system previously shown on plans dated 8-17-2015 (Project Area Enlargement drawing). The leach lines associated with this second system lie directly under the proposed equipment cabinet and tower foundations. The earlier plans referenced a Field Copy As-Built drawing dating back to 1989 and are on file with Environmental Health. As the new plans now show only the owner-identified leach lines, it is unclear if investigative site excavations possibly eliminated the conflict, or the Applicant did not wish to show this conflict. It should also be noted that the final set of plans shrunk from 19 sheets in the 8-17-15 set down to 8 sheets in the 12-2-2015 set, usually the reverse is true.

My review shows errors, misstatements, omissions and lack of clarifications that, in the whole, demonstrate a careless application that reflects contempt for the Planning Department, the plan approval process and the residents who will be greatly affected by this Project. This carelessness places an undue burden on the Planning Department as it requires a great deal of time to carefully review the plans and consultant findings and cross-reference them to the Applicant's written documentation for consistency or accuracy.

I would expect that the same lack of due diligence also applies to the Applicant's effort to identify feasible alternative sites.

Sincerely,

A handwritten signature in cursive script that reads "Charles C. Stevens".

Charles C. Stevens

CC: James Williams, Planning Commissioner, District 4

S15-0004 Arrowbee Lake Verizon Cell Tower – Review of Project Documents Obtained from Planning Department  
February 22, 2016

Item No.	Plan Document Reviewed	Comment by Applicant	Plan Review Finding
1	Project Support Statement Introduction- 2 <sup>nd</sup> paragraph	Second paragraph describes the project as “33’, 4”x20” x 20’ fenced compound”	Dimensions are unclear Drawing C-1 shows the lease site to be 46.47’ x 22’ and Drawing A-2 notes the fence surrounds the entire lease site.
2	Project Support Statement Introduction- 2 <sup>nd</sup> paragraph	States project is “designed to blend in with the existing trees”	Not true-refer to findings in Item No.5 of this report.
3	Project Support Statement Introduction- 2 <sup>nd</sup> paragraph	States design will “minimize earthwork needed” and “very little soil will need to be graded for this site”	Drawing C2.0 Site Grading Plan dated 7-13-2015- Civil engineer estimates 161 CY of cut material and 280 CY fill material and +-13,693SF of disturbed site area. Revised Plan Set dated 12-2-2015 omitted the preliminary grading plan as required by <u>Required Submittal Information for Special Use Permit</u> . Revised Plan C-1 is not a grading plan, but a Survey and Site Topography.
4	Project Support Statement Introduction- 2 <sup>nd</sup> paragraph	Equipment list is incomplete	Drawing A-3 shows there are also two (2) four foot microwave dishes.
5	Project Support Statement-Introduction- 2 <sup>nd</sup> paragraph	States the “site is well screened from public view by several large mature trees”	Not true. Over 40 homes plus lake users will have a clear view of the tower and equipment platform. The Applicant’s own visual simulations from across the lake over a half mile away (Distance is noted in Figure 1, Site location map provided by EBI Consulting) clearly show the tower is not screened.
6	Project Support Statement-Alternative Sites	Site list includes the same property twice (1310 Large Oak)	Shows failure to do a basic proofreading of the document.
7	Project Support Statement Lighting	Applicant states “unless tower lighting is required by the FAA the only lighting on the facility will be a shielded motion sensor light”	The document should state whether the project requires lighting under FAA guidelines or not. This is necessary information to evaluate the impact on the neighborhood.
8	Project Support Statement Environmental Setting	Applicant states the site is within a parcel that is zoned LI and is consistent with application design standards in the area and environment.	Completely erroneous. Zoning is RE-10 as easily determined through a parcel search on the Planning Department’s website. Plan sheet version 12-2-2015 also refers to zoning as LI.

S15-0004 Arrowbee Lake Verizon Cell Tower – Review of Project Documents Obtained from Planning Department  
February 22, 2016

Item No.	Plan Document Reviewed	Comment by Applicant	Plan Review Finding
9	Environmental Questionnaire Geology and Soils Question 3	Questionnaire answer requires % of land in specific slope categories. Applicant merely answers "xx" in the 0-10% category.	The grade on most of the parcel clearly exceeds 10%. The driveway per the previous set of plans dated 8-17-2015 was >20% per the engineer. Applicant's answer is incomplete and misleading.
10	Environmental Questionnaire Vegetation and Wildlife Question 11	Asks applicant to estimate % of predominant vegetation (trees, brush, grass etc.) Estimate % of each. Applicant answer was "grass".	Answer incomplete. Failed to provide the % of grass, trees, shrubs, etc. as required.
11	Environmental Questionnaire Vegetation and Wildlife Question 12	Applicant states zero trees diameter 6" will be removed when project implemented.	<p>Sheet A-1 states "all brush and trees are trimmed up a minimum 15'-0" from the ground" near the tower. Sheet A-2 reads "(E) trees to be removed as necessary for (P) monopine" referencing at least three oak trees. Trees (closest to the installation of the tower) are &gt; 6" per Appendix B-Tree Data of the Biological Resource Assessment and per plan C-1.</p> <p>Biological Resource Assessment document, page 29, item 6-3 indicates the author of the study was told no trees would be removed and so states. The study also states on the same page "the new gravel access road is pervious and will be placed on grade next to tree #3852 (NE corner of platform along the road), and so no grading is anticipated." Although not shown, given the absence of a grading plan, grading for the road will be likely. However, according to the Biological Resource Assessment document, page 29, item 6-3 states "Avoid paving under TPZ (Tree Protection Zone). If paving cannot be avoided, porous materials will be used. There appears to be a conflict regarding the paving materials in the area of Tree #3852.</p>

S15-0004 Arrowbee Lake Verizon Cell Tower – Review of Project Documents Obtained from Planning Department  
 February 22, 2016

Item No.	Plan Document Reviewed	Comment by Applicant	Plan Review Finding
12	Environmental Questionnaire Fire Protection Question 13	Applicant states Fire Protection District is Pilot Hill	Completely erroneous. The correct Fire District is Rescue FPD. This information is easily obtained through a parcel search on the Planning Department's website.
13	Environmental Questionnaire Noise Quality Question 19	Applicant states generator operates <u>once a month</u>	Applicant's Project Supporting Statement, Page 3, "Maintenance and Standby (sic) Generator Testing "states approximately 15 minutes <u>per week</u> ". Noise study by Hammond & Edison, Inc. Consulting Engineers indicates the generator output noise is exempt when commercial power is not available, so when the generator is needed, the noise levels are exempt from maximum noise limits. Applicant also failed to disclose air conditioning unit noise levels and expected usage. Noise study by Hammond & Edison, Inc. Consulting Engineers states "based on data from the manufacturers, the maximum noise level from an air conditioning unit is 65.0 dBA, measured at a reference distance of 10 feet in front, and the maximum noise level from the generator is 63.0 dBA measured at a reference distance of 23 feet. It is unclear what impact the noise from the air conditioning units will have or how often they will run.
14	Environmental Questionnaire Aesthetics Question 23	Applicant states the project will not obstruct scenic views from existing residential areas, public lands, public bodies of water and roads	False statement, it will obstruct scenic views from existing residential areas, general scenic view from roads and many residences will be negatively impacted.

S15-0004 Arrowbee Lake Verizon Cell Tower – Review of Project Documents Obtained from Planning Department  
 February 22, 2016

Item No.	Plan Document Reviewed	Comment by Applicant	Plan Review Finding
15	Environmental Questionnaire Sewage Question 26	Applicant states the project will not require a change in sewage disposal methods from those currently used in the vicinity.	<p>There is a conflict between the plans dated 8-17-2015 and the plans dated 12-2-2015. The older set shows two complete disposal systems on Plan Drawings B-2 (Project Area Enlargement) and C1.0 (Site Grading Plan); one identified by owner (not in conflict with tower), the other from As-Built drawings (in conflict with tower). The As-Built drawings are dated 7-14-89 and were prepared for the original house construction. In the 8-17-2015 plans, the Engineer interpreted the location of the leach lines from the As-Built document and put them on the drawings and stated in a note on B-2 that “Septic tank and leach field shown based on my interpretation of the As-Built design by Joe Norton furnished to me (not surveyed)”.</p> <p>The lines per the As-Built drawing on the older plans show the leach line going back and forth directly under the proposed equipment platform as well as under the foundation of the monopine.</p> <p>The new set of plans Sheet C-1 (Project Area Enlargement) dated 12-2-2015 omit all references to the existence of the As-Built locations and do not place these leach lines on the drawing anywhere. These As-Built drawings are available from Environmental Health.</p>
16	Environmental Questionnaire Growth Inducing Impacts, Question 29	Applicant states project will not result in the introduction of activities not currently found within the community.	Project will introduce new activities: 1) running the generator weekly, 2) diesel fuel deliveries, 3) maintenance on the tower for each cell provider leasing space 4) running the commercial air conditioner when required to cool electronics.

S15-0004 Arrowbee Lake Verizon Cell Tower – Review of Project Documents Obtained from Planning Department  
 February 22, 2016

Item No.	Plan Document Reviewed	Comment by Applicant	Plan Review Finding
17	Hazardous Materials Statement	Applicant certifies that there will be less than 55 gallons of diesel fuel at the facility regardless of the container size.	Fuel container size per manufacturer is 132 gallons per Drawings A-3, A-4.1, and A-4.2. How is this restriction of hazardous fuel storage monitored and enforced when the tank can hold over double the amount of allowed hazardous materials?
18	Drawing dated 12-2-2015 Sheet A-0	Parcel Zoning is LI	Incorrect, parcel zoning is RE-10 as easily determined through a parcel search on the Planning Department's website.
19	Drawings dated 12-2-2015 Sheet A-0	School District is Placerville Union SD	Incorrect, school district is Gold Trail Union as easily determined through a parcel search on the Planning Department's website.



S15-0004 Arrowbee Lake Verizon Cell Tower – Review of Project Documents Obtained from Planning Department  
February 22, 2016

Item No.	Plan Document Reviewed	Comment by Applicant	Plan Review Finding
20	Drawings dated 12-2-2015 Sheet A-4.1	<p>Detail 5 <u>Proposed South Elevation</u> shows a 6 foot chain link fence screening the distance from the ground to the platform only. Detail 13 <u>Proposed West Elevation</u> also shows the same screening below the platform on the south side.</p> <p>Sheet A-2 notes a 6 foot fence surrounds the lease area. Lease area is shown and dimensioned on Sheet A-2 to be 46'6" wide on the south face.</p>	<p>Per email from Applicant to Aaron Mount dated 9-11-2015, item 5, "additional chain link fence will also be placed to screen the outdoor equipment cabinets placed on top of the platform". Per plans dated 8-17-2015, Sheet A-5.2 Detail 17, the height of the generator equipment including the tank is 99 inches (8'3"). The height of the platform is approximately 12" and the height of the fence below the platform is 6' per Sheet A-4.1. Therefore the visual impact of the screening on the south side will be approximately 15' high (8'-3"+12"+6') and extend the width of the lease area (46.47'). The south side is the most viewed vantage. This is a significant visual element and does not blend in.</p> <p>Note: this tank and generator detail is not included in the current plans dated 12-2-2015, but the equipment remains the same per A-5.1, so the dimensions are assumed to remain the same.</p> <p>In addition, Applicant states in same email, item 6, that if an additional carrier is added, the ground space will need to be increased. Presumably the screening will need to be increased as well.</p>
21	Northern Central Information Center letter dated 1-9-2015 regarding archeological resources	Applicant submitted this document to satisfy part of item 15 of the Special Use Permit required Submittals	Submitted document was for a project in Nevada County, CA, not for this site.

PC 2/25/16  
#4

Charlene Tim &lt;charlene.tim@edcgov.us&gt;

---

**Fwd: cell tower in Arrowbee**

---

**Planning Unknown** <planning@edcgov.us>  
To: Charlene Tim <charlene.tim@edcgov.us>

Tue, Feb 23, 2016 at 12:55 PM

Please see public comment email.

----- Forwarded message -----

From: **Lisa at Sierra Valley** <lisasvhc@jps.net>  
Date: Tue, Feb 23, 2016 at 12:33 PM  
Subject: cell tower in Arrowbee  
To: planning@edcgov.us

To whom it may concern,

I am a 17 year resident of Arrowbee estates. We chose to build our home there due to the rural beauty and integrity of the neighborhood. Our neighborhood is beautiful in its natural state and most of my neighbors appear to honor this in our landscapes. While spending time at our lake (which is a huge asset to our community both in recreation and in value), the wildlife and horizons are simply spectacular

Aside from aesthetics, I have never once had any concern about health and safety issues in our neighborhood. To hear that an artificial tower which would detract from its valued natural beauty, would lessen our home values (who wants to live next to that?), and would potentially create a health and safety issue is quite alarming.

Arrowbee is simply not the place for this.

Thank you,  
Lisa Hlavay

PC 2/25/16  
#4  
64 pages

# Arrowbee Residents Opposed to S15-0004

Submitted: February 23, 2016

16 FEB 23 PM 3:46  
RECEIVED  
PLANNING DEPARTMENT

## Our Appeal: Deny the special use permit

### Key Points in Opposition

- I. The project is Injurious to the neighborhood
- II. The application is sloppy and deficient
- III. Verizon is not an honest player
- IV. Planning Department Staff Review is inadequate and deficient
- V. Broad opposition by those property owners most impacted by the project
- VI. Our appeal to the Commissioners

### **I. The Project is Injurious to the Neighborhood in violation of the requirements for a Special Use Permit:**

- A. The proposed project will be injurious by transforming and vandalizing the aesthetics and the viewshed of the neighborhood
  1. The centerpiece of the Arrowbee community is the lake and its surrounding countryside.
  2. The lake viewshed will be utterly destroyed by this 90-foot tower looming overhead:
    - a) The height of the tower will be over 200 feet higher than lake level and starkly transform the viewshed (Tower elevation 1615 v. lake elevation 1400)
    - b) The fake pine will not blend in with the natural oak woodland terrain, and will be an obviously inconsistent feature. The only pines present in the viewshed are Digger Pines, a large, multi-branched scrub pine, looking nothing like a true conifer shaped pine.
    - c) There is nothing "stealth" about a so-called "stealth mono pine", rather, it will be a beacon of industrial blight
- B. The proposed project will be injurious by lowering the recreational value of Arrowbee Lake
  1. The character of the community is based in part on the recreational value of the lake and park.
  2. Recreational uses include swimming, fishing, boating, picnicking

3. The recreational value will be significantly and negatively impacted by the industrial eyesore created by the proposed cell tower.
  4. It is undeniable that the cell tower will make these activities less enjoyable and less desirable.
  5. This impact was entirely ignored in the environmental assessment.
- C. The proposed project is injurious to the neighborhood in that it will lower property values.
1. The value of homes in Arrowbee is based in part by the viewshed and lake access
    - a) People buy in Arrowbee in large part because of the lake viewshed and the recreational resource
    - b) Agents market properties using the lake/park as a selling point
  2. Harming the viewshed and the recreational resource thus directly and negatively impacts property value
    - a) not just to those properties nearby, but all properties with access or potential access to the lake
    - b) Comparative sales will be reduced; impacting a broad area
    - c) Appraisers will find "external obsolescence" and appraisals will be discounted.
  3. Potential buyers will be influenced by this project.
    - a) Most don't like the ugliness of cell towers, particularly in an area where neighborhood aesthetics are the priority.
    - b) Most worry about the future value of their homes and resist making a poor investment.
    - c) Many will worry about the perceived negative health effects of electromagnetic radiation.
    - d) Our area already has a limited buyer pool compared to urban and suburban neighborhoods; the cell tower will reduce that pool drastically. The very person likely to seek a rural location in a picturesque locale is the exact person who would be most offended by the idea of living next to or within sight of a cell tower.
    - e) National Institute for Science, Law & Public Policy (June 2014)
      1. 94% of home buyers are less interested and would pay less for a property located near a cell tower
      2. 79% said under no circumstances would they ever purchase a property within a few blocks of a cell tower
    - f) Lenders consider "external obsolescence" when seeking appraisals for buyers obtaining loans to purchase.

4. Property values will be affected
  - a) Appraisal Journal (2007) - Proximity to a tower reduces price by 15% on average.
  - b) Appraisal Journal (2005) - Buyers expect to pay 10% to 20% less for a home near a cell tower. Actual prices were reduced by 21%.
  - c) Appraisers must consider "external obsolescence" when appraising to determine selling price
  - d) The California Department of Real Estate standard contract requires a Seller Property Questionnaire to be incorporated into the contract. Page 3, item K requiring disclosure of neighborhood noise or nuisances such as air conditioning equipment, generators, and cell towers.

D. The project will be injurious to the neighborhood by denying Property Use

1. The cell tower and attendant maintenance will increase noise and disrupt peace and tranquility
  - a) Acceptable County noise levels exceed the ambient noise level in our neighborhood.
  - b) Topography surrounding the lake amplifies noise and carries sound long distances
  - c) The Noise Study exempts noise levels exceeding County limits during a power outage, which is exactly when the diesel engine will be running.
  - d) The Noise Study ignores the fact that decibel output of the air conditioning units is equivalent to that of the generator. The air conditioning units will run whenever necessary to cool the equipment, not just during weekly testing. They will likely run non-stop during the summer months.
2. The blight caused by the cell tower impedes enjoyment of the recreational and aesthetic value of properties for individual homeowners.
  - a) Over 40 surrounding homes will have their lake views compromised.
  - b) FCLOA users of the lake and park will have their lake views compromised.
3. The cell tower and lease is a business enterprise that is incompatible with the community
  - a) It causes direct financial harm to other property owners in the service of a private business enterprise.
  - b) The proposed business enterprise will undeniably degrade residents' quality of life.
  - c) The proposed project will deny citizens the full use and enjoyment of their own property to the benefit of the business.

- E. The proposed project is injurious to neighborhood by threatening the financial stability of the Four Corners Land Owners Association
1. FCLOA is a voluntary organization whose only assets are a parcel developed as a park and lake access, and a parcel where Arrowbee Lake dam is located. The organization pays for park and lake maintenance, dam upkeep and state dam safety inspection fees, liability insurance and water rights permit fees.
  2. Arrowbee residents are eligible to be members, and voluntarily pay dues to join and to make use of the lake and park.
  3. The value of an FCLOA membership is significantly reduced by the impact of the cell tower on the recreational and aesthetic value of the lake/park. The top of the proposed tower is over 200 feet above the park elevation.
  4. FCLOA is in a tenuous financial position given the voluntary nature of membership and dues. Significant obligations for lake/park maintenance could be jeopardized by decreased value caused by the cell tower (for as long as the tower is in place).

**II. Verizon's Application is Sloppy and Deficient**

**A. Sloppy and Deficient Alternative Site Analysis**

1. No reasonable alternatives were offered in the Application.
  - a) The only alternatives offered are WITHIN the neighborhood
  - b) The Application listed one alternative twice (1310 Large Oak)
  - c) Three of the five "alternative" sites were rejected by Verizon, begging the question of why they were even presented.
  - d) One of the addresses shown as an alternative site where the landlord was not interested in pursuing a lease with Verizon was 4101 Birdseye Court. It is likely they really are referring to 4101 Birdseye View Lane, as there is no other street name in Arrowbee containing the word "Birdseye", and this property is next door to the proposed site. However, the owners of 4101 Birdseye View Lane have provided a written statement that they were never approached by Verizon to enter into any such Lease. That means Verizon only provided one alternative, 1310 Large Oak and their lease offer on that property was rejected, so really no alternatives were objectively analyzed.
2. Number and type of alternatives are limited by Verizon's unverified and unverifiable "claims"
  - a) Did Verizon make equivalent or better lease offers to other landowners, or did they stack the deck with weak offers?
  - b) Why didn't Verizon look at options outside of the Arrowbee neighborhood?

3. Lack of verifiable data

- a) Flawed and inadequate analysis overall that makes Planning Commission and public evaluation impossible.
- b) Verizon relies on the public and Planning Department's lack of technical knowledge about search rings and wireless network design to allege anything they want. At this point it seems the only way to verify Verizon's claims is to hire outside experts.

B. The project is not in compliance with Zoning Ordinance 5030 Section 130.40.130 adopted December 15, 2015:

**A. Applicability.** This Section provides for the orderly development of commercial and private wireless communication facilities including transmission and relay towers, dishes, antennas, and other similar facilities. The Board finds that minimizing the number of communication facilities through co-locations on existing and new towers and siting such facilities in areas where their potential visual impact on the surrounding area is minimized will provide an economic benefit and will protect the public health, safety and welfare.

1. Communication service providers shall:
  - a. Employ all reasonable measures to site their antennas on existing structures as facade mounts, roof mounts, or co-location on existing towers prior to applying for new towers or poles;
  - b. Work with other service providers and the Department to co-locate where feasible. Where co-location on an existing site is not feasible, develop new sites which are multi-carrier to facilitate future co-location, thereby reducing the number of sites countywide;
2. Generally, the county will seek to minimize the visual impacts of wireless communication facilities by limiting the number of facilities. However, the county may require construction of a number of smaller facilities instead of a single monopole or tower if it finds that multiple smaller facilities are less visually obtrusive or otherwise in the public interest.

1. Contrary to the Zoning Ordinance requirement to minimize the visual impact of wireless communications facilities, the Project Support Statement blatantly mischaracterizes the visual impact by stating ***"The proposed location of the tower is set within an unutilized portion of this parcel and will be designed to comply with all County of El Dorado's wireless design guidelines."***

***"This site lies in an area well screened from public views by se Verizon (sic), in adequate coverage capability. The proposed site is well screened from public view by several large mature trees"***



- a) This tower, contrary to the information in the Development Application, is not well screened from view, nor does a stealth monopine “blend in” with the existing Grey Pines as alleged in the Planning Commission Staff Report (See Sec IV – Planning Department Staff Review is Inadequate of this document)

C. Errors and omissions in the plan documents

1. A detailed review was conducted by Chuck Stevens, a retired licensed Architect who lives in the Arrowbee neighborhood. He reviewed the Application, supporting documents, questionnaires, correspondence, consultant reports and plans. Some documents were obtained from the El Dorado County Planning Department website shown as current on February 18, 2015, and others from a request made in person at the Planning Department Counter on February 10, 2016 by Linda Stevens, where she was able to obtain copies of any items not already shown on the website. The revised plans dated 12-2-2015 and revised Project Support Statement was received from the PLanning Department on February 22, 2016.
2. The review findings and letter from Chuck Stevens have been provided separately to the Commissioners.
  - a. The review shows errors, misstatements, omissions and lack of clarifications that, in the whole, demonstrate a careless application that reflects contempt for the Planning Department, the plan approval process and the residents who will be greatly affected by this project.

D. Inadequate and unconvincing project purpose and need

1. Weak Project Purpose & Need
  - a) There is no proof that there is a need for additional coverage except as asserted by Verizon.
  - b) Verizon coverage maps submitted are impossible to evaluate by any layperson. An expert would have to be hired to substantiate them.
  - c) Verizon’s own online coverage maps soliciting subscribers show they already have FULL coverage throughout the area for 4G, 3G, data and voice, messaging and push-to-talk. Why do these differ from the maps submitted with the application?
  - d) A local drive survey was conducted using three different Verizon phones. 362 locations in the greater Arrowbee neighborhood, Hidden Lakes area, Clark Mountain area, Lotus and Coloma were tested for completed calls, texts and emails. Each location tested a call, a text and an email for a

total of 1,086 wireless transmissions. All were successful with the exception of 4 calls made from the Crooked Mile area, representing a 98.8% success rate. These results substantiate Verizon's online map showing full coverage in these areas,

2. There is no significant gap in coverage based on the drive survey. Courts have held that removing dead zones isn't enough justification—burden of proof is to be met by the applicant that a "truly significant" gap in coverage actually exists.
  - a) The 9<sup>th</sup> Circuit Court of Appeals addressed what a significant gap in coverage is and isn't, stating that the TeleCommunications Act does not guarantee coverage free of dead spots
  - b) The drive survey clearly demonstrates that no significant gap exists.

III. **Verizon is NOT an Honest Player.** In a statement to the news media regarding another proposed project, Verizon told CBS Channel 4 it "is aware of this particular situation and has been *working closely with the landlord, city council and residents in the local community*. We strive to be an asset to any community and we operate within the guidelines set by the FCC. We plan to move forward with adding a new site in Broomfield to *meet growing customer demand* and improve network performance for the *community and first responders*". A similar statement was made by the Applicant at the hearing for the Swansboro Verizon Wireless Cellular Tower (Mono-Pine) project [Special Use Permit S15-0001] on Aug 13, 2015. These are examples of the meaningless "public relations" phrases thrown about by Verizon.

**A. Verizon claims that they "work closely with the landlord, city council and residents in the local community."**

**Reality:**

1. Verizon preys upon unsuspecting prospective landlords and locks them into contracts before they have full and complete information.
2. Verizon worked on this project for almost two years without bothering to engage the local residents in any way.
3. The Applicant requested a Planning Commission hearing postponement in order to "allow additional time to coordinate a neighborhood outreach meeting". As of February 21, 2016 not one sign has been posted in the neighborhood advertising such a meeting. The Applicant, Mark Lobaugh only spoke directly to one person Friday afternoon, February 19<sup>th</sup>, asking if they had any questions for him regarding the project and made calls on Monday February 22<sup>nd</sup> to two others. Calling this close to the hearing date to see if he could answer questions about the project does not constitute "neighborhood outreach". That should have been done in 2014. His calls are clearly a kabuki-

theater attempt to be able to claim that he had conducted neighborhood outreach, if only to satisfy his ostensible need for a delay in the hearing date.

**B. Verizon claims that they “strive to be an asset.”**

**Reality:**

1. They lie to prospective landlords, telling them their property value will increase, and that their neighbors’ property value will increase. This is false. Industry studies cited in the legally-focused Memorandum of Opposition presented to the Commissioners prove this along with the letters submitted into the public record from Appraisers and Realtors.
2. Verizon has one interest only, to make more money by expanding their services and doing so by expending the least amount of money possible in the process.
  - a) Citizens who are impacted by these projects don’t have the financial resources or expertise to fight on an equal footing.
  - b) The sites contested by nearby property owners, such as the Mosquito site and the Arrowbee site, are typically chosen by Verizon to utilize a neighborhood’s roads and existing power lines. This is in order to lower their capital costs and maximize their profits, without regard to the negative impact to those neighborhoods. Should homeowners be forced to shift dollars in the form of lost property values to a business enterprise in order to make the site more “economic? The Applicant should have to invest in grading roads and running power lines to more remote sites that would not negatively impact neighborhoods. Developers bear these costs, shouldn’t the Applicant? Individual homebuilders (many of us in the Arrowbee neighborhood) bear these costs when they build their homes, shouldn’t the applicant? In the August 13, 2015 Mosquito hearing, the Applicant stated that locating the tower elsewhere would not be “economic”. This is another meaningless assertion not proven without providing an audited financial report. Have they provided this, or do they really mean a lower siting cost means quicker profits and a quicker recoupment of their capital costs?
3. Verizon knows full well that it has convinced residents and local governments that they hold the upper hand. They make all the right public relations noises about being a good neighbor, but they run roughshod over everyone and they lie about local jurisdiction’s right to enforce their own Zoning laws.
4. Verizon will pretend to be generous and offer to mitigate noise and road concerns, but will not mitigate the most egregious concerns of visual blight and property value loss. They never offer to mitigate a giant fake pine tree by relocating it.

***C. Verizon will claim they “want to meet customer demand.”***

**Reality:**

1. The Applicant states: “Verizon Wireless is seeking to improve communication service in the El Dorado County area near Lotus Road”; “This tower will help alleviate an area of poor coverage and inadequate capacity within this service area which causes reoccurring lost calls and ineffective service. The site will relieve inadequate capacity in the area due to high cell phone and broadband usage in the greater Arrowbee Lake area.”
  - a) There is no proof of a truly significant gap in service as defined by appellate courts.
  - b) Verizon’s own online maps show full 4G, 3G, data and voice, messaging and push-to-talk. The existing Verizon network already performs adequately as evidenced by call research conducted by opponents to this project.
  - c) Verizon’s desire to sell more high speed data plans is not a good enough reason to cause injury to the neighborhood

***D. Verizon claims that they “want to “improve network performance for the community and first responders.”***

**Reality:**

1. The 911 argument to the community is false and misleading: anyone with a working cell phone, even if it isn’t under contract to a cellular company, can place a 911 call.

***E. Verizon bullies Planning Departments and tells them that they have no choice but to approve these Special Use Permits under the provisions of the Telecommunications Act of 1996. This is a complete falsehood.***

1. The Memorandum of Opposition submitted as a separate document and placed in the Public Record on February 23, 2016 details the legal reasons why this Special Use Permit should be denied under the laws of El Dorado County. It lays out detailed citations of Federal District Court, and Federal Appellate Court decisions that preserved the right of local jurisdictions to deny these applications using their own Zoning Ordinances. It is true that in order to escape a finding in favor of a Telecommunications Plaintiff, local jurisdictions must follow certain specific guidelines, but these are well documented in the

court decisions in favor of local jurisdictions. County counsel is surely capable of researching these decisions and advising the Commissioners.

2. The lies told by the Telecommunications applicants to Planning Departments have resulted in a systemic rubber-stamping of these applications. Aaron Mount spoke to Chuck Stevens February 22, 2015 and was told “they don’t have any choice to deny except for aesthetics”
3. Based on the Plan Review, it also appears the Planning Department makes little effort to fact check the statements made in the Application and Questionnaires against the other Plan documents. We believe this may be because they perceive there is no point, given their belief they cannot deny these applications.
4. There are many examples of cases that can and should be reviewed by County Counsel, in addition to those cited in our Memorandum, that demonstrate successful denial of towers by local governments. Just one example in our own circuit court is:
  - a. Sprint PCS v City of Palos Verde Estates (2009) Ninth Circuit Court of Appeals
    - i. “[7] Our interpretation of California law is consistent with the outcome in *City of Anacortes*, in which we rejected a 332(c)(7)(B)(iii) challenge to a city’s denial of a WCF permit application that was based on many of the same aesthetic considerations at issue here. There, the city determined that the proposed WCF would have “a commercial appearance and would detract from the residential character and appearance of the surrounding neighborhood”; that it “would not be compatible with the character and appearance of the existing development”; and that it would “negatively impact the views” of residents. What was implicit in our decision in *City of Anacortes* we make explicit now: California law does not prohibit local governments from taking into account aesthetic considerations in deciding whether to permit the development of WCFs within their jurisdictions.” (Exhibit 1)
5. Examples of Jurisdictions who have denied Special Use Permits
  - a. El Dorado County, Planning Commission, South Lake Tahoe, 2015
  - b. Washoe, Nevada County Board of Adjustment-denied for aesthetic reasons and compliance with their Master Plan – Exhibit 2
  - c. City of Danville (November 2015) – Exhibit 3
  - d. Benton County, Arkansas (May 2015) – Exhibit 4

- e. DeKalb County (February 2015) - – Exhibit 5
- f. Mendham Board of Adjustment (July 2010)- denied for violating the intent and purposes of the Zoning Ordinance – Exhibit 6

IV. **Planning Staff review is inadequate and deficient / Inadequate notice to homeowners**

- A. Deficient and predictable evaluation of the impact of the tower on visual aesthetics.

Excerpts from the Staff Analysis, Exhibit J and our comments follow:

- *The site plans and photo simulations show the tower and ground equipment to be designed to meet the wireless communications facilities standards of Zoning Ordinance Section 130.14.210. **The tower itself would be visible from some points in the surrounding area, including the residential areas to the south, east, and west** (refer to comment 1) below).*
- ***The tower is designed as a monopine to camouflage the facility components and to blend in with the surrounding landscape.** (refer to comment 2) below)*
- *The antennas would be covered with fake pine tree branches, pine needle socks would be placed over the antennas and microwave dishes, and the tower pole would be painted to resemble a pine tree. **The fencing surrounding the lease area is also designed to blend with the visual character of the area.** (refer to comment 3) below)*
- ***With these design features, the facility will not degrade the existing visual character and quality of the site and its surroundings**(refer to comment 4) below).*
- *It is typical in an oak woodland area for single pine trees to project out and there are multiple Grey Pines in the area that do so. **The project has been conditioned to design branches to be installed with random lengths that create an asymmetrical appearance conforming to the shape of a natural Grey Pine tree** (refer to comment 5) below).*
- *Zoning Ordinance Sections 17.14.210 F & G require screening in order to reduce the aesthetics impacts to a less than significant level. **The project has been conditioned to add landscaping using Toyon shrubs and Grey Pine trees, two types of plants that are native to the site vicinity**(refer to comment 6) below).*
- ***As conditioned, and with strict adherence to applicable County Code, impacts in this category would be reduced below a level of significance.** (refer to comment 7) below)*



1. Views from the south, east, and west constitute just “some points”? The only vantage point unmentioned is north, the location of the landowner’s home. As the parcel to the north of the site goes back downhill from the top elevation, and has no dwellings on it, there is no vantage from the north except as experience by the site landowner. Therefore the real description should state “all points”, not “some”. This is merely boilerplate language used by the Planning Staff as “nothing to see here, move along” so as to make a favorable determination to the benefit of the Applicant. Unless of course, they are including views from the Hubble Telescope.
2. A fake pine tree does not blend into predominately oak woodland. There are no pines of similar shapes in the viewshed.
3. The visual character of the area does not include chain link fencing. That fencing style appears nowhere in the viewshed. Most fencing in the development is not meant for screening, it is either ranch style 3 or 4 rail fencing or stock fencing.
4. Please refer to public comments that have been placed in evidence to completely refute this conclusion.
5. Asymmetrical fake branches as shown on Plan Sheet A-4.1 Detail 5 and 13 are in no way similar to the vase shaped branching structure of a Grey Pine.



Grey Pine



Asymmetrical Monopine

6. Grey pines are described as having multiple, irregular trunk leaders and U-shaped forks and taking on an oval form with sparse foliage. Growth is fast (3 feet per year) up to 80’ tall. Planting these below the lease area as a means to “condition the project” means no significant visual screening would occur for decades. Planting Toyon would only serve to eventually screen the equipment cabinet.

**The preponderance of evidence from the above disputed statements should lead a reasonable person to conclude the visual impact is not, and should not have been designated by the Staff Report, as “below a level of significance”, especially since it is undisputed that visual aesthetics are a basis for denial and this is known by the Planning Department.**

- B. No analysis of the impact should the tower height be increased under the Middle Class Tax Relief and Jobs Creation Act of 2012.
- C. No analysis of the requirements for warning lights by the FAA once the tower height is increased under the Middle Class Tax Relief and Jobs Creation Act of 2012.
- D. The County was given a list of all homeowners in the Arrowbee development in October 2015 and said that by law they needed to include all the addresses in their notification. However, the County failed to mail the 30-day Notice of the hearing scheduled for February 11, 2016 to all property owners and residents. When told of this oversight, the County mailed the Notice of Postponement after February 11.

V. **Broad opposition from the neighbors most affected by this project:**

- A. Numerous affected property owners plan to appear at the hearing and provide testimony.

A read of the Ninth Circuit Court of Appeals decision in SPRINT PCS Assets V. City of Palos Verde Estates (Exhibit 1) states “The City reviewed propagation maps and mock-ups of the proposed WCFs and a report that details the aesthetic values at stake. **It had the benefit of public comments** and an oral presentation from Sprint’s personnel. From the entirety of the evidence, one could reasonable determine, as the City did, that the Via Azalea WCF would detract from the residential character of the neighborhood and that the Via Azalea WCF would not be in keeping with the appearance of that main entrance to the City. Consequently we find that the City’s decision was supported by substantial evidence and we reverse the District Court.”

- B. Numerous letters, and a legally-focused Memorandum of Opposition, have been placed into the public record that can be used by the County as substantive written evidence to defend against a Verizon legal challenge of a denial. Make use of the following precedent.



1. See *Omnipoint Communications Inc. v. The City of White Plains*, 430 F.2d 529 (2d Cir. 2005)
  - a) "Third, we reject Omnipoint's argument that the Board gave improper deference to community opposition. In *Town of Oyster Bay*, 166 F.3d at 495-96, we declined to rule whether constituent comments amount to substantial evidence, and noted tension between *Omnipoint Corp. v. Zoning Hearing Bd.*, 20 F.Supp.2d 875, 880 (E.D.Pa.1998) (holding that "unsubstantiated personal opinions" expressing "[g]eneralized concerns . . . about the aesthetic and visual impacts on the neighborhood do not amount to substantial evidence"), and *AT & T Wireless PCS v. City Council of Va. Beach*, 155 F.3d 423, 430 (4th Cir.1998) (holding that neighbors' aesthetic concerns could constitute "compelling" evidence for a city council). In this case, some of the residents' comments may amount to no more than generalized hostility, such as the objection that the tower was being dumped on them rather than on their more affluent neighbors in Scarsdale. At the same time, however, we conclude that the Board had discretion to rely (as it did) on aesthetic objections raised by neighbors who know the local terrain and the sightlines of their own homes. The Fourth Circuit observed in *AT & T Wireless PCS* that "the repeated and widespread opposition of a majority of the citizens . . . who voiced their views — at the Planning Commission hearing, through petitions, through letters, and at the City Council meeting — amounts to far more than a 'mere scintilla' of evidence to persuade a reasonable mind to oppose the application." 155 F.3d at 431. We need not go as far as the Fourth Circuit, however, to decide this case." - Exhibit 7

## VI. Our Appeal to the Commissioners:

We understand that some neighbors in the Arrowbee area are more concerned about their cellular coverage than the property values and aesthetics of those within view of the site. The good news is that their concerns are already mitigated by the proven fact that there is already excellent cellular service throughout the entire area. Signal boosting devices also can be utilized if desired.

Living in a rural area, by default, means one does not get all the conveniences that are available in urban and suburban neighborhoods. None of us have Comcast or natural gas available, we are 30 minutes from the nearest hospital, 20 minutes from the nearest store, bank or gas station.

Despite this, we all moved here because we were willing to give up those conveniences for the rural ambiance, peaceful quietness and beautiful views;

In an effort to inform the neighborhood, we have

- Held two open meetings to notify residents about the project, to invite comment from our residents and to explain our concerns;
- Posted numerous signs on the mailboxes and property owners have placed signs on their property;
- Sent several mailers to everyone in the community;
- Conducted extensive research and committed scores and scores of man-hours to investigating every aspect of this project and related law and data;
- Created and publicized an extensive website with every piece of information we could find to be helpful to everyone looking for more information.

On the other hand:

- Verizon kept this project a secret from early 2014 and never announced it publicly to the neighborhood.
- The property owners did not inform their neighbors. We only learned from a Road Committee member when the County sent the Technical Advice Memo out to the Arrowbee Road Zone Committee in October of 2015.
- Meeting signs and yard signs have been torn down and stolen.
- Verizon never contacted FCLOA to ask how this project might impact them.
- Verizon has never contacted any of the neighbors adjacent to the proposed site.
- Verizon has never held a neighborhood outreach meeting despite their stated intent to.

If these projects were as beneficial to the community as Verizon touts in their press releases, it seems they would be happy to get the neighborhood involved early on in the process.

We ask that you deny the Special Use Permit.

Granting the Special Use Permit will place an extraordinary burden on residents and is injurious to our neighborhood:

- We and our families will suffer financial loss
- We will suffer from worry and emotional distress

- We will have our lives disrupted and lose our basic right to peaceful enjoyment of our property.

We ask you to protect us from a burden that is not only extraordinary and wholly unnecessary, but is.

We do not believe it is the County's duty to make sure Verizon gets economically more advantageous Special Use Permits when it causes financial harm to our citizens.

We believe the County has a DUTY to enforce their Zoning Ordinance to the benefit of the property owners especially since the law is clearly on the side of local governments in using their discretion.

We believe the County has a duty to use its deny the Application based on obvious visual aesthetics.

Tell Verizon to deploy their considerable resources to find an alternative that is not injurious to neighborhoods.

Tell the prospective landlord that they cannot engage in a business enterprise that is injurious to their neighbors.

Who is the County's constituency? Is your job to ease the application process by rubber-stamping poorly done negative declarations and allowing Verizon to build in cheaper locations—which happen to be our beautiful rural neighborhoods—or is your job to enforce your ordinances and protect property owners?

Thank you,

Arrowbee Residents in Opposition to S15-0004

EXHIBIT 1

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

SPRINT PCS ASSETS, L.L.C., a  
Delaware limited liability  
company, wholly-owned by Sprint  
Telephony PCS, LP, a Delaware  
limited partnership,

*Plaintiff-Appellee,*

v.

CITY OF PALOS VERDES ESTATES, a  
California municipality; CITY  
COUNCIL OF THE CITY OF PALOS  
VERDES ESTATES, its governing  
body; JOSEPH SHERWOOD, in his  
official capacity as Mayor Pro  
Tem of the City of Palos Verdes  
Estates; JOHN FLOOD, in his official  
capacity as Councilmember of the  
City of Palos Verdes Estates;  
ROSEMARY HUMPHREY, in her  
official capacity as  
Councilmember of the City of  
Palos Verdes Estates; DWIGHT  
ABBOTT, in his official capacity as  
Councilmember of the City of  
Palos Verdes Estates; JAMES F.  
GOODHART, in his official capacity  
as Councilmember of the City of  
Palos Verdes Estates,

*Defendants-Appellants.*

No. 05-56106  
D.C. No.  
CV-03-00825-AHS  
OPINION

Appeal from the United States District Court  
for the Central District of California  
Alicemarie H. Stotler, District Judge, Presiding

14535

14536 SPRINT PCS ASSETS v. PALOS VERDES ESTATES

---

Argued and Submitted  
July 6, 2009—Pasadena, California

Filed October 14, 2009

Before: Barry G. Silverman, Kim McLane Wardlaw, and  
Jay S. Bybee, Circuit Judges.

Opinion by Judge Wardlaw

---

**COUNSEL**

Scott J. Grossberg, Richard R. Clouse, Amy R. von Kelsch-Berk, and Angelica A. Arias of Cihigoyenette, Grossberg & Clouse, Ranco Cucamonga, California, and Daniel P. Barer of Pollak, Vida & Fisher, Los Angeles, California, for the appellants.

John J. Flynn III, Gregory W. Sanders, and Michael W. Shonafelt of Nossaman, Guthner, Knox & Elliott, LLP, Irvine, California, for the appellee.

**OPINION**

WARDLAW, Circuit Judge:

The City of Palos Verdes Estates (“City”) appeals the grant of summary judgment in favor of Sprint PCS Assets, L.L.C. (“Sprint”). We must decide whether the district court erred in concluding that the City violated the Telecommunications Act of 1996 (“TCA”), Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in various sections of U.S.C. titles 15, 18, and 47), when it denied Sprint permission to construct two wireless telecommunications facilities in the City’s public rights-of-way. Specifically, we must decide (1) whether the City’s denial is supported by substantial evidence, as required by 47 U.S.C. § 332(c)(7)(B)(iii), and (2) whether the City’s denial constitutes a prohibition on the provision of wireless service in violation of 47 U.S.C. §§ 253(a) and 332(c)(7)(B)(i)(II). Because the City’s denial is supported by substantial evidence, and because disputed issues of material fact preclude a finding that the decision amounted to a prohibition on the provision of wireless service, we reverse and remand.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

The City is a planned community, about a quarter of which consists of public rights-of-way that were designed not only to serve the City’s transportation needs, but also to contribute to its aesthetic appeal. In 2002 and 2003, Sprint applied for permits to construct wireless telecommunications facilities (“WCF”) in the City’s public rights-of-way. The City granted eight permit applications but denied two others, which are at issue in this appeal. One of the proposed WCFs would be constructed on Via Azalea, a narrow residential street, and the other would be constructed on Via Valmonte, one of the four main entrances to the City. Sprint acknowledged that it already served four thousand customers in the City with its existing network but stated that the proposed WCFs were nonetheless needed to replace its existing infrastructure.

A City ordinance (“Ordinance”) provides that WCF permit applications may be denied for “adverse aesthetic impacts arising from the proposed time, place, and manner of use of the public property.” Palos Verdes Estates, Cal., Ordinances ch. 18.55.040(B)(1). Under the Ordinance, the City’s Public Works Director (“Director”) denied Sprint’s WCF permit applications, concluding that the proposed WCFs were not in keeping with the City’s aesthetics. The City Planning Commission affirmed the Director’s decision in a unanimous vote.

Sprint appealed to the City Council (“Council”), which received into evidence a written staff report that detailed the potential aesthetic impact of the proposed WCFs and summarized the results of a “drive test,” which confirmed that cellular service from Sprint was already available in relevant locations in the City. The Council also heard public comments and a presentation from Sprint’s representatives. The Council issued a resolution affirming the denial of Sprint’s permit applications. It concluded that a WCF on Via Azalea would disrupt the residential ambiance of the neighborhood and that a WCF on Via Valmonte would detract from the natural beauty that was valued at that main entrance to the City.

Denied permits by the Director, the Commission, and the Council, Sprint took its case to federal court, seeking a declaration that the City’s decision violated various provisions of the TCA. The district court concluded that the City’s decision was not supported by substantial evidence and thus violated 47 U.S.C. § 332(c)(7)(B)(iii). This determination was premised on a legal conclusion that California law prohibits the City from basing its decision on aesthetic considerations. The district court also concluded that the City violated 47 U.S.C. §§ 253 and 332(c)(7)(B)(i)(II) by unlawfully prohibiting the provision of telecommunications service, finding that the City had prevented Sprint from closing a significant gap in its coverage. The City timely appeals.



## II. JURISDICTION AND STANDARD OF REVIEW

The district court exercised jurisdiction pursuant to 28 U.S.C. § 1331. We have jurisdiction pursuant to 28 U.S.C. § 1291. “We review summary judgment de novo.” *Nelson v. City of Davis*, 571 F.3d 924, 927 (9th Cir. 2009) (citation omitted). Summary judgment is appropriate only if the pleadings, the discovery, disclosure materials on file, and affidavits show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). All justifiable factual inferences must be drawn in the City’s favor, and we must reverse the grant of summary judgment if any rational trier of fact could resolve a material factual issue in the City’s favor. *See Nelson*, 571 F.3d at 927.

## III. DISCUSSION

The tension between technological advancement and community aesthetics is nothing new. In an 1889 book that would become a classic in city planning literature, Vienna’s Camillo Sitte lamented:

[T]here still remains the question as to whether it is really necessary to purchase these [technological] advantages at the tremendous price of abandoning all artistic beauty in the layout of cities. The innate conflict between the picturesque and the practical cannot be eliminated merely by talking about it; it will always be present as something intrinsic to the very nature of things.

Camillo Sitte, *City Planning According to Artistic Principles* 110 (Rudolph Wittkower ed., Random House 1965) (1889).

The TCA attempts to reconcile this “innate conflict.” On the one hand, the statute is intended to “encourage the rapid deployment of new telecommunications technologies.” Pub.

L. No. 104-104, 110 Stat. 56. On the other hand, it seeks “to preserve the authority of State and local governments over zoning and land use matters.” *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 992 (9th Cir. 2009) (citation omitted). The TCA seeks a balance by placing certain limitations on localities’ control over the construction and modification of WCFs. *See* 47 U.S.C. §§ 253(a), 332(c)(7)(B). This appeal involves a challenge to the district court’s conclusion that the City exceeded those limitations.

**A. Section 332(c)(7)(B)(iii)**

[1] One of the limitations that the TCA places upon local governments is that “[a]ny decision . . . 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.” 47 U.S.C. § 332(c)(7)(B)(iii). As we have explained, “The upshot is simple: this Court may not overturn the [City’s] decision on ‘substantial evidence’ grounds if that decision is authorized by applicable local regulations and supported by a reasonable amount of evidence.” *MetroPCS, Inc. v. City & County of S.F.*, 400 F.3d 715, 725 (9th Cir. 2005).<sup>1</sup> Thus, we must determine (1) whether the City’s decision was authorized by local law and, if it was, (2) whether it was supported by a reasonable amount of evidence. Both requirements are satisfied here.

**1. The City’s decision was authorized by local law.**

“[W]e must take applicable state and local regulations as we find them and evaluate the City decision’s evidentiary

---

<sup>1</sup>The district court did not have the benefit of our decision in *MetroPCS* when it issued its order granting Sprint summary judgment on its claims under 47 U.S.C. §§ 253 and 332(c)(7)(B)(iii). Indeed, there has been considerable development in this area of the law since the district court resolved Sprint’s motion. *See, e.g., Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008); *City of Anacortes*, 572 F.3d at 987.

support (or lack thereof) relative to those regulations.” *MetroPCS*, 400 F.3d at 724. As noted above, the Ordinance authorizes the denial of WCF permit applications on aesthetic grounds. Also relevant for our purposes is the California Public Utilities Code (“PUC”), which provides telecommunications companies with a right to construct WCFs “in such manner and at such points as not to incommode the public use of the road or highway,” Cal. Pub. Util. Code § 7901, and states that “municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.” *Id.* § 7901.1. The district court erred in concluding that the City’s consideration of aesthetics was invalid under the PUC.<sup>2</sup> The California Constitution gives the City the authority to regulate local aesthetics, and neither PUC § 7901 nor PUC § 7901.1 divests it of that authority.

---

<sup>2</sup>During the pendency of this appeal, pursuant to Cal. R. Ct. 8.548(a), we requested that the California Supreme Court decide whether PUC §§ 7901 and 7901.1 permit public entities to regulate the placement of telephone equipment in public rights-of-way on aesthetic grounds. The California Supreme Court denied our request, concluding that a decision on that issue may not be determinative in these federal proceedings. Accordingly, the task now before us is to predict how the California Supreme Court would resolve the issue. *See Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 872 (9th Cir. 2007). We may look to the state’s intermediate appellate courts for guidance. *Id.* While the question of whether California’s municipalities have the power to consider aesthetics in deciding whether to grant WCF permit applications has been addressed by us and the California Courts of Appeals, it has not been resolved in a published opinion on which we may rely. *See Sprint PCS Assets, L.L.C. v. City of La Cañada Flintridge*, 182 Fed. Appx. 688, 690-91 (9th Cir. 2006) (city may not consider aesthetics); *Sprint Telephony PCS v. County of San Diego*, 44 Cal. Rptr. 3d 754, 764-66 (Cal. Ct. App. 2006) (city may consider aesthetics) *superseded by* 143 P.3d 654 (Cal. 2006); *see also* 9th Cir. R. 36-3 (unpublished dispositions are not precedent); Cal. R. Ct. 8.1115 (no citation or reliance on unpublished opinions).

*i. California's Constitution*

[2] The California Constitution authorizes local governments to “make and enforce within [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. art. XI, § 7. California’s Supreme Court has explained that a “‘city’s police power under this provision can be applied only within its own territory and is subject to displacement by general state law but otherwise is as broad as the police power exercisable by the Legislature itself.’” *Fisher v. City of Berkeley*, 693 P.2d 261, 271 (Cal. 1984) (quoting *Birkenfeld v. City of Berkeley*, 550 P.2d 1001, 1009 (Cal. 1976)); see also *Conn. Indem. Co. v. Super. Ct. of San Joaquin County*, 3 P.3d 868, 872 (Cal. 2000) (state constitution provides city with “general authority to exercise broad police powers”). There is no question that the City’s authority to regulate aesthetics is contained within this broad constitutional grant of power. See *Landgate, Inc. v. Cal. Coastal Comm’n*, 953 P.2d 1188, 1198 (Cal. 1998) (aesthetic preservation is “unquestionably [a] legitimate government purpose[ ]”); *Ehrlich v. City of Culver City*, 911 P.2d 429, 450 (Cal. 1996) (“[A]esthetic conditions have long been held to be valid exercises of the city’s traditional police power.”).

Thus, the threshold issue is not, as Sprint argues and the district court apparently believed, whether the PUC authorizes the City to consider aesthetics in deciding whether to grant a WCF permit application, but is instead whether the PUC divests the City of its constitutional power to do so.<sup>3</sup> There-

---

<sup>3</sup>Sprint urges us to approach the question differently, relying on language from *Western Union Tel. Co. v. Hopkins*, 116 P. 557 (Cal. 1911), that

[i]t is universally recognized that the state in its sovereign capacity has the original right to control all public streets and highways, and that except in so far as that control is relinquished to municipalities by the state, either by provision of the state consti-

fore, the question actually before us is whether the City's consideration of aesthetics is "in conflict with general laws." Cal. Const. art. XI, § 7. "A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by . . . legislative implication." *Action Apartment Ass'n, Inc. v. City of Santa Monica*, 163 P.3d 89, 96 (Cal. 2007) (citation and quotation omitted). "Local legislation is contradictory to general law when it is inimical thereto." *Id.* (citation and quotation omitted). Absent a specific legislative indication to the contrary, we presume that there is no conflict where the local government regulates an area over which it has traditionally exercised control. *See id.* Sprint has the burden of demonstrating that a conflict exists. *See id.* We conclude that neither PUC § 7901 nor PUC § 7901.1 conflicts with the City's default power to deny a WCF permit application for aesthetic reasons.

ii. PUC § 7901

[3] The City's consideration of aesthetics in denying Sprint's WCF permit applications comports with PUC § 7901,

---

tution or by legislative act not inconsistent with the Constitution, it remains with the state legislature.

*Id.* at 562. The defect in Sprint's argument is that it contemplates a relinquishment of state sovereignty through statute only, thus turning a blind eye to the constitutional grant of power contained in Cal. Const. art. XI, § 7. Our observation that the City possesses constitutionally based police powers over aesthetics is entirely consistent with the *Hopkins* court's recognition that the utility companies' right to construct telegraph facilities remained subject to "the lawful exercise by the city of such rights in regard to such use as it has under the police power." *Hopkins*, 116 P. at 563; *see also id.* at 562 (city retains power to do "such things in regard to the streets and the use thereof as were justified in the legitimate exercise of the police power"); *see also Pac. Tel. & Tel. Co. v. City & County of S.F.*, 336 P.2d 514, 519 (Cal. 1959) (telephone franchise is a matter of state concern but city still controls the particular location and manner in which public utility facilities are constructed in the streets). The *Hopkins* court refrained from articulating the scope of the city's police powers because, unlike in this appeal, that was "a question in no way involved in [the] case." *Hopkins*, 116 P. at 562-63.

which provides telecommunications companies with a right to construct WCFs “in such manner and at such points as not to incommode the public use of the road or highway.” Cal. Pub. Util. Code § 7901. To “incommode” the public use is to “subject [it] to inconvenience or discomfort; to trouble, annoy, molest, embarrass, inconvenience” or “[t]o affect with inconvenience, to hinder, impede, obstruct (an action, etc.).” 7 The Oxford English Dictionary 806 (2d ed. 1989); *see also* Webster’s New Collegiate Dictionary 610 (9th ed. 1983) (“To give inconvenience or distress to.”). The experience of traveling along a picturesque street is different from the experience of traveling through the shadows of a WCF, and we see nothing exceptional in the City’s determination that the former is less discomforting, less troubling, less annoying, and less distressing than the latter. After all, travel is often as much about the journey as it is about the destination.

The absence of a conflict between the City’s consideration of aesthetics and PUC § 7901 becomes even more apparent when one recognizes that the “public use” of the rights-of-way is not limited to travel. It is a widely accepted principle of urban planning that streets may be employed to serve important social, expressive, and aesthetic functions. *See* Ray Gindroz, *City Life and New Urbanism*, 29 Fordham Urb. L.J. 1419, 1428 (2002) (“A primary task of all urban architecture and landscape design is the physical definition of streets and public spaces as places of shared use.”); Kevin Lynch, *The Image of the City* 4 (1960) (“A vivid and integrated physical setting, capable of producing a sharp image, plays a social role as well. It can furnish the raw material for the symbols and collective memories of group communication.”); Camillo Sitte, *City Planning According to Artistic Principles* 111-12 (Rudolph Wittkower ed., Random House 1965) (1889) (“One must keep in mind that city planning in particular must allow full and complete participation to art, because it is this type of artistic endeavor, above all, that affects formatively every day and every hour of the great mass of the population . . .”). As Congress and the California Legislature have recognized,

the “public use” of the roads might also encompass recreational functions. *See, e.g.*, Cal. Pub. Util. Code § 320 (burying of power lines along scenic highways); 23 U.S.C. § 131(a) (regulation of billboards near highways necessary “to promote . . . recreational value of public travel . . . and to preserve natural beauty”).

These urban planning principles are applied in the City, where the public rights-of-way are the visual fabric from which neighborhoods are made. For example, the City’s staff report explains that Via Valmonte, which is adorned with an historic stone wall and borders a park, is “cherished for its rural character, and valued for its natural, unspoiled appearance, rich with native vegetation.” Meanwhile, Via Azalea is described as “an attractive streetscape” that creates a residential ambiance. That the “public use” of these rights-of-way encompasses more than just transit is perhaps most apparent from residents’ letters to the Director, which explained that they “moved to Palos Verdes for its [a]esthetics” and that they “count on this city to protect [its] unique beauty with the abundance of trees, the absence of sidewalks, even the lack of street lighting.”

[4] Thus, there is no conflict between the City’s consideration of aesthetics in deciding to deny a WCF permit application and PUC § 7901’s statement that telecommunications companies may construct WCFs that do not incommode the public use of the rights-of-way.

*iii. PUC § 7901.1*

[5] Nor does the City’s consideration of aesthetics conflict with PUC § 7901.1’s statement that “municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed.” Cal. Pub. Util. Code § 7901.1. That provision was added to the PUC in 1995 to “bolster the cities’ abilities with regard to construction management and to send a message to

telephone corporations that cities have authority to manage their construction, without jeopardizing the telephone corporations' statewide franchise." S. Comm. on Energy, Utilities, and Commerce, Analysis of S.B. 621, Reg. Sess., at 5728 (Cal. 1995); *see also id.* ("[I]ntent of this bill is to provide the cities with some control over their streets.")<sup>4</sup> If the preexisting language of PUC § 7901 did not divest cities of the authority to consider aesthetics in denying WCF construction permits, then, a fortiori, neither does the language of PUC § 7901.1, which only "bolsters" cities' control.

[6] Aesthetic regulations are "time, place, and manner" regulations,<sup>5</sup> and the California Legislature's use of the phrase "are accessed" in PUC § 7901.1 does not change that conclusion in this context. Sprint argues that the "time, place and manner" in which the rights-of-way "are accessed" can refer only to when, where, and how telecommunications service providers gain entry to the public rights-of-way. We do not disagree. However, a company can "access" a city's rights-of-way in both aesthetically benign and aesthetically offensive ways. It is certainly within a city's authority to permit the former and not the latter.<sup>6</sup>

---

<sup>4</sup>We cite the legislative history only to put the statute in its historical context; we do not rely upon it to discern the statute's meaning.

<sup>5</sup>In the First Amendment context, California courts have recognized that governments' aesthetic-based regulations fall within the rubric of "time, place, and manner" regulations. *See, e.g., Showing Animals Respect & Kindness v. City of W. Hollywood*, 83 Cal. Rptr. 3d 134, 141 (Ct. App. 2008) (ordinance with declared purpose of improving city aesthetics was valid time, place, and manner regulation); *Union of Needletrades, AFL-CIO v. Super. Ct. of L.A. County*, 65 Cal. Rptr. 2d 838, 850-51 (Ct. App. 1997) (requirement that leaflets comport with mall's general aesthetics constituted valid time, place, and manner regulation). We see no principled basis on which to distinguish aesthetic "time, place, and manner" regulations in the First Amendment context from aesthetic "time, place, and manner" regulations in the context of PUC § 7901.1.

<sup>6</sup>Our conclusion that the language of PUC § 7901.1 does not conflict with the City's consideration of aesthetics in denying WCF permit appli-



[7] Our interpretation of California law is consistent with the outcome in *City of Anacortes*, in which we rejected a § 332(c)(7)(B)(iii) challenge to a city's denial of a WCF permit application that was based on many of the same aesthetic considerations at issue here. *City of Anacortes*, 572 F.3d at 994-95. There, the city determined that the proposed WCF would have "a commercial appearance and would detract from the residential character and appearance of the surrounding neighborhood"; that it "would not be compatible with the character and appearance of the existing development"; and that it would "negatively impact the views" of residents. *Id.* at 989-90. We noted that the city ordinance governing permit applications required the city to consider such factors as the height of the tower and its proximity to residential structures, the nature of uses of nearby properties, the surrounding topography, and the surrounding tree coverage and foliage. *Id.* at 994. We stated that "[w]e, and other courts, have held that these are legitimate concerns for a locality." *Id.* (citing *T-Mobile Cent., LLC v. United Gov't of Wyandotte County, Kan. City*, 546 F.3d 1299, 1312 (10th Cir. 2008); *Cellular*

---

cations is supported by the California Legislature's use of materially identical language in the California Coastal Act, which provides that:

The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to . . . [t]he need to provide for the management of access areas so as to protect . . . the aesthetic values of the area by providing for the collection of litter.

Cal. Pub. Res. Code § 30214(a)(4). If Sprint's narrow interpretation of PUC § 7901.1 were correct, it would follow that, in the California Coastal Act, the Legislature explicitly stated that the need to regulate the time, place, and manner of access depends on the need to protect aesthetic values, but that, in PUC § 7901.1, the Legislature meant to say that control over the time, place, and manner of access excluded control over aesthetics. We see no reason to ascribe this inconsistency to the California Legislature, however.

*Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 494 (2d Cir. 1999)). What was implicit in our decision in *City of Anacortes* we make explicit now: California law does not prohibit local governments from taking into account aesthetic considerations in deciding whether to permit the development of WCFs within their jurisdictions.

Sprint warns that this conclusion will allow municipalities to run roughshod over WCF permit applications simply by invoking aesthetic concerns. However, our decision in no way relieves municipalities of the constraints imposed upon them by the TCA. A city that invokes aesthetics as a basis for a WCF permit denial is required to produce substantial evidence to support its decision, and, even if it makes that showing, its decision is nevertheless invalid if it operates as a prohibition on the provision of wireless service in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II). Nor does our decision constitute a judgment on the merits of the City's decision in this case. Our function is not to determine whether the City's denial of Sprint's permit applications was a proper weighing of all the benefits (e.g., economic opportunities, improved service, public safety) and costs (e.g., the ability of residents to enjoy their community) of the proposal, but is instead to determine whether the City violated any provision of the TCA in so doing.

**2. *The City's decision was supported by such relevant evidence that a reasonable mind might accept as adequate.***

[8] “[W]hile the term ‘substantial evidence’ is not statutorily defined in the Act, the legislative history of the TCA explicitly states, and courts have accordingly held, that this language is meant to trigger ‘the traditional standard used for judicial review of agency decisions.’” *MetroPCS*, 400 F.3d at 723 (quoting H.R. Conf. Rep. No. 104-458, at 208 (1996)). A municipality's decision that is valid under local law will be upheld under the TCA's “substantial evidence” requirement

where it is supported by “ ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’ ” *Id.* at 725 (quoting *Town of Oyster Bay*, 166 F.3d at 494).

[9] The City’s finding that the proposed WCFs would adversely affect its aesthetic makeup easily satisfies this standard. The Council reviewed propagation maps and mock-ups of the proposed WCFs and a report that detailed the aesthetic values at stake. It had the benefit of public comments and an oral presentation from Sprint’s personnel. From the entirety of the evidence, one could reasonably determine, as the City did, that the Via Azalea WCF would detract from the residential character of the neighborhood and that the Via Valmonte WCF would not be in keeping with the appearance of that main entrance to the City. Consequently, we find that the City’s decision was supported by substantial evidence, and we reverse the district court.

#### **B. Section 332(c)(7)(B)(i)(II)**

[10] The TCA provides that a locality’s denial of a WCF permit application “shall not prohibit or have the effect of prohibiting the provision of personal wireless services.” 47 U.S.C. § 332(c)(7)(B)(i)(II). “[A] locality can run afoul of the TCA’s ‘effective prohibition’ clause if it prevents a wireless provider from closing a ‘significant gap’ in service coverage.” *MetroPCS*, 400 F.3d at 731.<sup>7</sup> The “effective prohibition” inquiry “involves a two-pronged analysis requiring (1) the showing of a ‘significant gap’ in service coverage and (2) some inquiry into the feasibility of alternative facilities or site locations.”<sup>8</sup> *Id.* at 731. Because we conclude that Sprint has

---

<sup>7</sup>We focus on the “effective prohibition” clause because the City has not adopted a “general ban” on wireless services. See *MetroPCS*, 400 F.3d at 731. To the contrary, the City’s ordinance contemplates the construction of WCFs, and the City has repeatedly granted permits for WCF construction in the past.

<sup>8</sup>We have adopted the “multiple provider rule,” which focuses the “significant gap” inquiry on the issue of whether a particular provider is pre-

not shown the existence of a significant gap as a matter of law, we do not reach the second element of the analysis.

The district court's legal conclusion that Sprint established the existence of a "significant gap" rests on two purportedly undisputed facts: (1) "[w]ithout either facility, [Sprint's] network will contain significant gaps in coverage" and (2) existing wireless coverage in the City was "based on obsolete facilities needing replacement." These factual findings were insufficient to support summary judgment because they were disputed in the record below.

### *1. Significance of the Gap*

"[S]ignificant gap' determinations are extremely fact-specific inquiries that defy any bright-line legal rule." *Id.* at 733. Yet Sprint and the district court take a bare-bones approach to this inquiry. The district court simply declared, as a matter of fact and fiat, that there was "a significant gap" in Sprint's coverage in the City. Sprint defends this factual finding on appeal, arguing that its presentation of radio frequency propagation maps was sufficient to establish a "significant gap" in coverage. We disagree.

Sprint's documentation stated that the proposed WCFs would provide "good coverage" for .2 to .4 miles in various directions. However, it remains far from clear whether these estimates were relative to the coverage available from existing WCFs or to the coverage that would be available if there were no WCFs at all (i.e., if the existing WCFs were removed). In any event, that there was a "gap" in coverage is certainly not sufficient to establish that there was a "significant gap" in coverage. *See id.* at 733 n.10 ("[T]he relevant service gap

---

vented from filling a significant gap in its own service coverage; the availability of wireless service from other providers in the area is irrelevant for purposes of this analysis. *MetroPCS*, 400 F.3d at 733.

must be truly ‘significant . . . .’ ”); *id.* at 733 (“The TCA does not guarantee wireless service providers coverage free of small ‘dead spots . . . .’ ”).

[11] The district court found that there was a “gap” in Sprint’s coverage but failed to analyze its legal significance. District courts have considered a wide range of context-specific factors in assessing the significance of alleged gaps. *See, e.g., Cellular Tel. Co. v. Zoning Bd. of Adjustment of the Borough of Ho-Ho-Kus*, 197 F.3d 64, 70 n.2 (3d Cir. 1999) (whether gap affected significant commuter highway or railway); *Powertel/Atlanta, Inc. v. City of Clarkston*, No. 1:05-CV-3068, 2007 WL 2258720, at \*6 (N.D. Ga. Aug. 3, 2007) (assessing the “nature and character of that area or the number of potential users in that area who may be affected by the alleged lack of service”); *Voice Stream PCS I, LLC v. City of Hillsboro*, 301 F. Supp. 2d 1251, 1261 (D. Or. 2004) (whether facilities were needed to improve weak signals or to fill a complete void in coverage); *Nextel Partners, Inc. v. Town of Amherst*, 251 F. Supp. 2d 1187, 1196 (W.D.N.Y. 2003) (gap covers well traveled roads on which customers lack roaming capabilities); *Am. Cellular Network Co., LLC v. Upper Dublin Twp.*, 203 F. Supp. 2d 383, 390-91 (E.D. Pa. 2002) (considering “drive tests”); *Sprint Spectrum, L.P. v. Town of Ogunquit*, 175 F. Supp. 2d 77, 90 (D. Me. 2001) (whether gap affects commercial district); *APT Minneapolis, Inc. v. Stillwater Twp.*, No. 00-2500, 2001 WL 1640069, at \*2-3 (D. Minn. June 22, 2001) (whether gap poses public safety risk). Here, the district court said nothing about the gap from which it could have determined its relative significance (i.e., whether preventing its closure was tantamount to a prohibition on telecommunications service), nor did Sprint’s counsel offer any support for a conclusion that the gap was significant.<sup>9</sup>

---

<sup>9</sup>During oral argument, Sprint’s counsel was unable to explain satisfactorily on what basis the district court found that the gap was significant. He acknowledged that there was a dispute as to the significance of the gap in Sprint’s coverage within the City, and he even conceded that he had seen nothing in the record that led him to believe that the matter was uncontested.

## **2. *Obsolescence of Existing WCF Network***

We need not decide whether the TCA's anti-prohibition language even covers situations, like that presented here, in which a telecommunications service provider seeks to replace existing WCFs, as contrasted with the more typical situation in which the provider seeks to construct new WCFs. It is sufficient to note that the record does not establish the obsolescence of the old facilities as a matter of uncontested fact. Sprint's representatives not only failed to explain why the existing facilities were no longer usable, but they actually undermined that position by pointing out that those facilities were currently serving some four thousand residents and acknowledging at the public hearing that Sprint service was generally available in the City. Residents' comments at the public hearing and the drive test results contained in the staff report submitted to the Council further illustrate that Sprint's existing network was, at the very least, functional. Consequently, we reverse the grant of summary judgment in Sprint's favor on its § 332(c)(7)(B)(i)(II) "effective prohibition" claim.

### **C. Section 253**

The district court also concluded that the City's ordinance was "preempted by the Supremacy Clause, insofar as it conflicts with section 253(a) of the Telecom Act." However, due to intervening changes in the law, this Supremacy Clause claim is no longer viable. *See Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571, 578 (9th Cir. 2008) (en banc) (overruling *City of Auburn v. Qwest Corp.*, 260 F.3d 1160 (9th Cir. 2001), and holding that "a plaintiff suing a municipality under section 253(a) must show actual or effective prohibition, rather than the mere possibility of prohibition" (citation omitted)); *see also City of Anacortes*, 572 F.3d at 993. Moreover, we need not decide whether § 253 contemplates "as applied" challenges. Insofar as Sprint seeks to advance an "as applied" challenge under § 253, we conclude,

for the reasons set forth above, that Sprint has not demonstrated a prohibition on the provision of wireless service as a matter of law. *See Sprint Telephony*, 543 F.3d at 579 (“We need not decide whether Sprint’s suit falls under § 253 or § 332. As we now hold, the legal standard is the same under either.”).

#### IV. CONCLUSION

[12] Because the City’s decision to deny Sprint’s application for a permit to construct two new WCFs was supported by substantial evidence and because disputed issues of material fact preclude a finding that the decision constituted a prohibition on the provision of wireless service, we **REVERSE and REMAND**.

Home (<http://www.scenicnevada.org/wp/>)

/ Welcome page (<http://www.scenicnevada.org/wp/category/welcome-page/>)

# Verizon Cell Phone Tower Denied

County Commissioners last week unanimously rejected Verizon's appeal to place a 60-foot-tall cell phone tower disguised as a fake water tower in an open area of north Washoe Valley.

Residents and members of Washoe Valley Alliance and Scenic Nevada turned out for the public hearing and showed opposition to the tower saying the master plan did not allow the type proposed by Verizon and that it would have ruined the pristine scenic views in the valley. Many thanks to the 129 residents who signed Scenic Nevada's petition opposing the tower.

During the past year, Verizon's request was reviewed and recommended for denial three times by the South Washoe County Advisory Board. Also, county staff had recommended denial, as had the county's Board of Adjustment.

(<http://www.scenicnevada.org/wp/wp-content/uploads/2015/02/Washoe-Cell-Tower-Collage.jpg>)

## Verizon's Appeal

Verizon appealed the Board of Adjustment recommendation and in its presentation said the tower was needed to avoid dropped calls and service interruptions. But commissioners were not persuaded the 60-foot tower was the only option.

Commissioner Vaughn Hartung suggested a few six or 12-foot-tall towers that could be more easily screened at different locations in the valley. Commission Chair Marsha Berkbigler cautioned that the views in the valley were "extremely important" to Washoe Valley residents.

The Verizon representative admitted during the hearing that rather than one 60-footer, a few far shorter ones were possible but that Verizon didn't have any locations that were feasible now.

## Tower Would Ruin Views





Washoe Valley Alliance and Scenic Nevada maintained the proposed cell tower was incompatible with the scenic character of Washoe Valley. This rural oasis between Reno and Carson City provides spectacular views which boast forested Sierra Nevada Mountains to the west and the sagebrush covered Virginia Range to the east.

Washoe Valley is unique for its natural lakes, wetlands, a Federal Wildlife Management Area and a scenic byway and Regional Parks also add to the enjoyment for the region's visitors and residents. It was named one of 13 LA CHANCE Scenic Places by Scenic Nevada in 2007.

For more information about the Washoe Valley Alliance see the website at Washoevalley.org (<http://www.washoevalley.org/>).

## Learn More

---

- > Community Loses First Round  
(<http://www.scenicnevada.org/wp/community-loses-first-round/>)
- > More Digital Signs for Reno  
(<http://www.scenicnevada.org/wp/more-digital-signs-for-reno/>)
- > Report: Expert Confirms Local Digital Signs Are Brighter Than Necessary  
(<http://www.scenicnevada.org/wp/report-expert-confirms-local-digital-signs-are-brighter-than-necessary/>)
- > Scenic Nevada Opinion  
(<http://www.scenicnevada.org/wp/scenic-nevada-opinion/>)
- > Reno Postpones Review of Giant Sign Proposal  
(<http://www.scenicnevada.org/wp/reno-reviews-giant-sign->

## Join the Conversation

---

Like us on Facebook (<https://www.facebook.com/ScenicNevada>) to share your favorite Scenic photos and get updates.

Follow us on Twitter (<https://twitter.com/scenicnevada>) to stay on top of scenic news from Nevada and around the country.

Find out how you can come with us to local government and community meetings (<http://www.scenicnevada.org/wp/how-to-get-involved/>) to share how important scenic preservation is to you!

## About Scenic Nevada

---

Scenic Nevada is a 501(c)3 nonprofit, non-partisan, environmental organization that works to preserve, protect and enhance the scenic character of Nevada. Our principal activities are to educate the general public of the economic, social, and cultural benefits of scenic preservation.

## Contact Us

---

- 📍 Address:  
150 Ridge St.  
Reno, NV 89501
- ☎ Phone: 775-848  
(tel:775-848-82
- ✉ Email:  
info@scenicnevada.org  
(mailto:info@scenicnevada.org)

EXHIBIT 3



Log in Register



Search

Home News Town Square Blogs A&E Real Estate Classifieds Shop Join Contact

15

Updated: Thu, Nov 19, 2015, 5:37 am  
Uploaded: Thu, Nov 19, 2015, 5:02 am

### Danville council shouts down cell tower proposal

Unanimous vote upholds residents' appeal, overturns Planning Commission's prior approval

by Kalama Hines

The Danville Town Council voted against a Verizon Wireless cell tower proposed for the eastern part of town Tuesday night, siding with residents who opposed the imitation-tree telecommunications pole coming to their rural neighborhood.

Council members shared many of the same concerns as the residents, including the height, aesthetics and noise of the tower, as well as questioning whether the pole was needed to fill an actual gap in coverage -- as the cellular company contended.

"I cannot, in all good conscience, support the project as it has been proposed," Councilman Robert Storer said at the Town Meeting Hall before the council vote. "If we deny this project tonight, it will force (Verizon) to look at the alternatives, and that is what I want them to do."

The unanimous decision to uphold the residents' appeal of the Planning Commission's prior project approval came after a four-hour hearing Tuesday that featured presentations by Verizon's consulting team and the appellants, citizen commentary and council deliberations.

The proposal on the table called for a 60-foot faux monopine tower with accompanying equipment behind a six-foot-tall fence fitted with privacy slats on 1,000 square feet Verizon would have leased at 1455 Lawrence Road.

Verizon representatives said the aim of the tower was to provide the Lawrence Road area with improved cellular service -- focused on increasing data streaming -- as well as offloading service from the nearby Hidden Hills tower.

After months of deliberations and a redesign by Verizon to incorporate an imitation-tree concept, the project was given the go-ahead by the Danville Planning Commission with a 5-2 vote in September, amid outcry from area residents who opposed the tower.

#### TOP BLOGS

##### My scary drive home

By Roz Rogoff | 14 comments | 968 views

##### Tending 'Nino

By Tom Cushing | 10 comments | 549 views

##### Travelling to Iraq with Pastor Tim

By Tim Hunt | 0 comments | 421 views

##### The Four Must Dos on College Campus Visits

By Elizabeth LaScala | 0 comments | 170 views

##### Symbolike

By John A. Barry | 1 comment | 106 views

View all local blogs

**Gina Piper**  
925.200.0202  
PLEASANTON  
READERS CHOICE  
**Best REALTOR**  
2012 ~ 2013 ~ 2014 ~ 2015  
BHGTri-Valley Realty - BRE #: 01201349  
www.PleasantonRealEstate.com

Read the blog  
**Tim Talk**  
BY TIM HUNT



A group of residents then joined together and challenged the commission approval, filing an appeal to the council last month through attorney Bryan Wenter of real estate law firm Miller Starr Regalia.

Coming into Tuesday night's appeal hearing, town planning staff recommended the council deny the appeal and approve the project, saying that no viable alternatives existed to meet Verizon's coverage needs, given the site location, limited visibility from the public, alternate site studies and a radio frequency report that determined the project complied with federal exposure limits.

But the council members unanimously went the other way, deciding there was too much evidence against Verizon's proposed tower to allow it to be built.

"I am concerned about the residents, the neighborhood," Mayor Mike Doyle said before the vote. "They have been through the Design Review Board, the planning commission and sat here (for four hours) ... We were elected to make a decision."

The council agreed with many aspects of the critical 30-minute presentation from the appellant attorney and Lawrence Road resident Jim Richards Tuesday night.

The appeal, filed by Wenter on Oct. 2, argued the tower proposal did not comply with the Danville General Plan and Danville Municipal Code, particularly in regards to the height.

"This (tower would be) in a 35-foot height zone," Wenter told the council, "and you're looking at a 60-foot tower."

The height of the tower was a significant concern raised Tuesday night, as the residents and council contended that 60 feet was excessive for the need in the area.

Michelle Ellis, of Complete Wireless Consulting representing Verizon, responded by stating that the 60-foot design was the minimal height required to provide the services intended. Due to surrounding trees and topography, according to Ellis, a shorter tower would have an affected direct line of sight -- comparing the tower to a light beacon.

Another concern voiced by Richards was that future expansions of the tower could be implemented without further town review. He claimed the tower should really be viewed as an 80-foot-tall plan because the federal Telecommunications Act of 1996 would allow the tower to be extended 20 additional feet if deemed necessary by Verizon.

Richards also pointed to the aesthetics, saying that the faux-tree pole would be nothing more than "an ugly green tree" matching no other surrounding plant life.

As Richards pointed out, much of the surrounding trees are deciduous, meaning that half of the year there will be no screening and the tower would stick out as a green column surrounded by brown.

"There is no native tree in this area, or even an introduced one that has a profile anywhere close to these monopines," he said. "The bottom line is that it would be offensive, especially to our rural residence."

Once the meeting was opened to public comments, other residents voiced displeasure not only with the plan itself, but also the initial approval. In all, four of the six citizen speakers, including Richards, said they are Verizon customers.

The town's noise ordinances were also addressed, as the proposed tower would be located adjacent to the Breton's School for Dogs and Cats. The dog kennel facility, according to resident Denise DeFazio, houses up to 200 dogs at a time. She feared being the sound emitted by the tower and its accompanying structure would cause further noise from the kennel.

In addition to the added sound from the dogs and the tower itself, the council and residents were concerned about the operation of a diesel generator within the unmanned facility -- though Ellis claimed that the generators would operate only in the direst of emergency circumstances.

Another key problem, in the opinion of Storer, is whether or not there actually is a gap in coverage.

With some question raised in the final Planning Commission meeting regarding whether or not there was gap coverage that needed to be addressed, Monterosso resident John Kim said he conducted his own research.

After walking, biking and driving around the entire proposed coverage area, Kim said he collected 1,385 "data points" and his findings showed that much of the area revealed strong coverage while very few had less-than-moderate coverage. With those findings, Kim questioned whether there was any additional service needed at all.



**express**  
Get top local news daily  
**SIGN UP**

**Need a real estate or mortgage professional?**

**Click here for our directory**

**3143 Paseo Granddo, Pleasanton**  
**TAKE A TOUR**

**A Concierge Approach To Real Estate**

**McGuire Team** ALAIN PINEL

925.462.SOLD (7653) | www.TimMcGuire.net

**JUST LISTED at \$938,000**  
4413 Arbutus Court, Pleasanton

**OPEN Sat & Sun 1-4pm**

**More Details**

**Julia Murtagh**  
"Bringing Integrity to Your Front Door"  
ALAIN PINEL DBE #01751854

(925) 997-2411 • JuliaMurtagh.com



Upon completion of the public comments portion of the meeting, Verizon's team took its opportunity for rebuttal and to offer further concessions. Verizon's outside counsel, attorney Paul Albritton, offered for his client to pay for a third-party engineer, selected by the Town Council, to conduct separate research.

"If we can give you the information to make a better decision, whichever way it goes, we would like to do that," Albritton said.

The council decided that even after the potential third-party research was conducted, the proposed tower was not in the best interest of the town, especially in a particularly rural area.

As Storer argued, allowing the structure to be constructed in the face of the general plan could set a scary precedent.

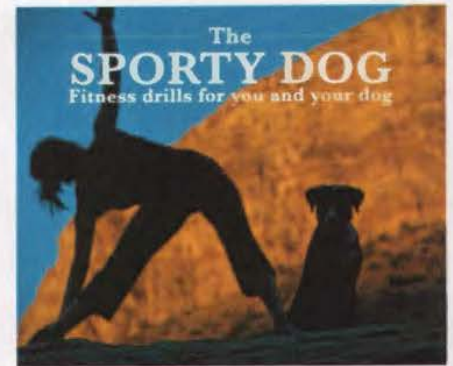
Though the meeting spanned four hours, the decision may have been made much quicker than that, after Albritton early on addressed Verizon's ability to file a lawsuit if the appeal was upheld.

That comment coaxed a decisive response from Councilman Newell Arnerich.

"You threatened to sue us and that is absolutely the most unprofessional thing in my 21 years," Arnerich said. "I really find it very, very offensive. It is very hard to listen to much of what you are saying in a very, very long-winded speech you've given, trying to make your case."

Arnerich's response was met with applause from the 20-plus residents in attendance -- as did the 5-0 vote at the end of the meeting to uphold the appeal with prejudice.

*Kalama Hines is a freelance writer for DanvilleSanRamon.com.*



## Comments

Posted by **Jim Branman**  
a resident of Danville  
on Nov 19, 2015 at 9:14 am

8 people like this

Citizens of this area 1, Corporate "BS" and Verizon 0. The citizens win with the help of a nicely pitched shutout by the Town Council. Verizon, find another area to ruin or find a taller mountain somewhere else to help your cause. I believe the Stanford mascot is a tree, so perhaps some creativity on your part may be better next time. Maybe you could have little "antenna trees" running around the area providing coverage that your traditional technology cannot! AT&T works just fine here..thank you very much! The actions of Verizon actually make the local rooster crowing noise seem pleasant. I just may buy a rooster to celebrate. Mr. Storer, thank you for your leadership as well as that of your town council colleagues!

[Email Town Square Moderator](#) [Report Objectionable Content](#)

Posted by **P**  
a resident of Blackhawk  
on Nov 19, 2015 at 11:58 am

10 people like this

I want to thank everybody who participated in the fight against this tower. I wish I had the opportunity to participate in that meeting but couldn't. I was really concerned about the health hazards---nobody should ever totally trust any government frequency reports. Again, a big 'THANK YOU' to all who have participated in behalf of those who spoke for the rest of us.

[Email Town Square Moderator](#) [Report Objectionable Content](#)

Posted by **Andrew**  
a resident of Danville  
on Nov 19, 2015 at 6:27 pm

6 people like this

It's all a ploy by Verizon to try to provide service to San Ramon, where there are huge gaps in coverage. Trying to build something on Danville's land that isn't even going to benefit its people. Disgusting. Huge win for justice today.

[Email Town Square Moderator](#) [Report Objectionable Content](#)

Posted by **Herman Glates**

14 people like this

a resident of Danville  
on Nov 19, 2015 at 7:11 pm  
*Herman Glates is a registered user.*

People should still boycott Breton's Dog Boarding. They're the ones who were going to put the Verizon tower on their land.

They're bad neighbors.

Drive them out of business.

[Email Town Square Moderator](#) [Report Objectionable Content](#)

Posted by **local tower victim**

7 people like this

a resident of Danville  
on Nov 20, 2015 at 7:45 am

Danville Town Council is grandstanding pre-election. There are 3 members up next year. Try toughening Danville's cell tower ordinance if you are really serious about controlling towers, Town Council. The current one doesn't even require camouflaging, except for neutral paint!

There are other towers all over Danville and the Town said there was nothing to prevent it when I tried to question a new one. Guess Verizon doesn't have as much influence with the Council as the other companies and other landowners wanting a sweet deal.

[Email Town Square Moderator](#) [Report Objectionable Content](#)

Posted by **Danville Mom**

10 people like this

a resident of Monte Vista High School  
on Nov 20, 2015 at 7:58 am

Wow, Herman, drive out Bretton's kennel? Really? I've lived in Danville for over 21 years and they've been here long before that. Just a nasty thing to say. Happy Thanksgiving.

[Email Town Square Moderator](#) [Report Objectionable Content](#)

Posted by **Herman Glates**

12 people like this

a resident of Danville  
on Nov 20, 2015 at 9:29 am  
*Herman Glates is a registered user.*

Oh yeah? Well my family's been around these parts since 1910. So what.

You shouldn't point a radio tower at people's faces.

It ain't neighborly.

[Email Town Square Moderator](#) [Report Objectionable Content](#)

10 people like this



Posted by **Jimmy**  
a resident of Sycamore Valley Elementary School  
on Nov 21, 2015 at 9:22 am

I agree Bretton is a BAD neighbor! To make little money, they put everyone in danger. Next day, she might agree to rent out some other ugly stuff. She should just sell her land and go!

Posted by **Get Breton out** 10 people like this  
a resident of Danville  
on Nov 21, 2015 at 9:42 am

Shame on you, Breton!

Thank you, council!

[Email Town Square Moderator](#) [Report Objectionable Content](#)

Posted by **Danville** 3 people like this  
a resident of Danville  
on Nov 22, 2015 at 5:37 am

We also need to check out those planning commission guys who approves it, they apparently did not do homework to see if there is real need for such tower, or they are just too "business friendly" and did not put residents' interest on top! If they are elected, we should make sure they are not!

[Email Town Square Moderator](#) [Report Objectionable Content](#)

Posted by **Planning Commission** Like this comment  
a resident of Danville  
on Nov 23, 2015 at 8:44 am

Here is the article on the planning commission approval: [Web Link](#)

It has the names of the people who voted for and gainst it

[Email Town Square Moderator](#) [Report Objectionable Content](#)

Posted by **Danville** 1 person likes this  
a resident of Danville  
on Nov 26, 2015 at 8:03 pm

Ok, read the planning commission report. It is amazing this Crystal Decastro guy that would ignore so many objections on this 11,600 Watt super powerful cell tower. I guess he is appointed and not elected? Who appointed him? I don't feel in good hands with such guy or guys in the planning commission for Danville. They should be let go or resign.

[Email Town Square Moderator](#) [Report Objectionable Content](#)

Posted by **Huh?** Like this comment  
a resident of Danville  
on Nov 26, 2015 at 10:26 pm

Crystal is a woman, and she works for the town (she is not a commissioner)

[Email Town Square Moderator](#) [Report Objectionable Content](#)

6 people like this

Posted by **The Word**  
a resident of Danville  
on Nov 27, 2015 at 8:52 am

So where was this attitude when the council faced the decision on the Summerhill housing project? Are they trying to solicit support now hoping those of us in Danville near Blackhawk will forget about that disaster? I still won't vote for any one of them.

Posted by **Longtime Resident**  
a resident of San Ramon  
on Nov 27, 2015 at 6:26 pm

6 people like this

Thank goodness we have all been saved by the evil death rays that would be undoubtedly been fired from this tower.

[Email Town Square Moderator](#) [Report Objectionable Content](#)

**Don't miss out on the discussion!**  
Sign up to be notified of new comments on this topic.

Email:

SUBMIT

**Post a comment**

Posting an item on Town Square is simple and requires no registration. Just complete this form and hit "submit" and your topic will appear online. Please be respectful and truthful in your postings so Town Square will continue to be a thoughtful gathering place for sharing community information and opinion. All postings are subject to our [TERMS OF USE](#), and may be deleted if deemed inappropriate by our staff.

We prefer that you use your real name, but you may use any "member" name you wish.

Name:

Select your neighborhood or school community: \*

Comment: \*

Verification code:

Enter the verification code exactly as shown, using capital and lowercase letters, in the multi-colored box.

\*Required Fields

SUBMIT



A subscription is required for some content. [Register for free.](#)

[Home](#) [News](#) [Sports](#) [Opinion](#) [Business](#) [Features](#) [Photos](#) [Videos](#) [Weeklies](#) [Blogs](#)

[Homes](#) [Jobs](#) [Classifieds](#) [Deals](#)

Archive Search Result

**Headline:** Denial of cell tower upheld on appeal  
**Date:** May 14, 2015  
**Author:** STAFF REPORT  
**Publication:** Northwest Arkansas Democrat-Gazette (AR)  
**Page:** 14  
**Section:** Benton County

FAYETTEVILLE - The 8th U.S. Circuit Court of Appeals rejected this week an appeal from Fayetteville-based Smith Communications, which had sued Washington County in federal court after a cell tower permit was rejected.

The cell tower dispute began in the summer of 2013 when the Quorum Court denied a permit to build a 300-foot tower between Prairie Grove and West Fork. The county justices cited aesthetic and quality of life concerns from the rural site's neighbors, potential harm to property values as well as safety because of the proximity of the proposed tower to nearby homes.

Smith Communications sued, saying the county didn't explain its reasoning as completely as federal law requires. Smith contended minutes from meetings in which the tower permit was discussed couldn't be used by the county as a detailed basis provided for rejecting the permit.

U.S. District Court Judge Jimm Hendren ruled in favor of the county in June 2014. Hendren said the county didn't follow the letter of the law in the way it told the company about the denial, but the county later fixed the oversight and was justified in its decision to deny the permit.

Appeals court justices noted that Smith Communications officials attended the meetings where Quorum Court members discussed their reasons for rejecting the permit and were provided the minutes of those meetings, even if somewhat late. "Put simply, in light of these facts and record before us, Smith received adequate notice of the reasons for the Quorum Court's denial," according to the court's opinion, released Tuesday. "Upon thoroughly reviewing all of Smith's contentions and the record as a whole, we conclude that substantial evidence supports the Quorum Court's denial of Smith's application."

[Back to your search results](#) | [Return to the search page](#) | [Printer Friendly version](#)

NWA Media	News	Sports	Opinion	Contact	Weeklies
Obituaries	Local	High School	Local Opinion	Advertising	Bella Vista Weekly Vista
Corrections	State	College	All Opinion/Editorial	Circulation	Westside Eagle Observer
Events	National	Professional		Customer Support	TFW (The Free Weekly)
NIE	International	Outdoors		Photography	McDonald County Press
Subscribe		ARPreps		Arkansas Democrat-Gazette	La Prensa Libre
Advertise		WholeHogSports		Submission Forms	The Herald-Leader
					The Times of Northeast Benton County



EXHIBIT 5

There will be no cell towers on school property in DeKalb County.

That's the result of a four-year legal battle that began when the DeKalb County Board of Education voted in 2011 to allow the placement of cell towers on school property.

In a Nov. 3 letter to the DeKalb County School District, a T-Mobile representative stated the cell phone company "is exercising its right to terminate" an agreement between to parties which would have allowed the placement of a T-Mobile cell tower at Briarlake Elementary School.

T-Mobile had an agreement to place cell towers on the properties of nine county schools. After the agreement between the school district and the cell phone company came to light in 2001, residents around Briarlake Elementary formed No Briarlake Tower LLC and hired an attorney.

No Briarlake Tower "contended that, even though the DeKalb County school system is exempt from the DeKalb County zoning code if it uses residential property for educational purposes, a cellphone monopole owned and operated by a private company is not an educational use, and therefore T-Mobile was required to comply with the DeKalb County Zoning Code," according to a statement by the group.

Eventually, the DeKalb County Board of Commissioners sided with No Briarlake Tower and denied a building permit to T-Mobile for the monopole at Briarlake Elementary and another school.

T-Mobile filed suit in federal court challenging the denial of the permits.

"The U.S. District Court of North Georgia granted DeKalb County a summary judgment in T-Mobile's lawsuit regarding the cell tower planned for the Lakeside High School property," according to a DeKalb County news release.

"Subsequently, T-Mobile canceled nine leases for cell towers on other school properties, which led to the voluntary dismissal of the second lawsuit regarding the cell tower at Margaret Harris Comprehensive School."

"This is a victory for the children in DeKalb schools and the residents who live near DeKalb Schools," said interim DeKalb County CEO Lee May. "The court's decision is consistent with the county's position that private actors on school property have to comply with the county's zoning codes."

T-Mobile also paid \$5,400 to DeKalb County to cover court costs related to the litigation.

In a statement, Commissioner Jeff Rader said, "The decision is important because it helps limit exemptions to zoning laws intended to protect neighborhoods from incompatible development. Governments (federal, state, local and public schools) retain this important prerogative, but it should only be exercised to directly advance their public mission, not simply to generate revenue."

Commissioner Kathie Gannon, in a statement, said she is "pleased with the federal court ruling and proud that DeKalb enforced this protection of our neighborhoods contained in our zoning ordinance."

"The cell towers will not be built on the school properties and the validity of our zoning procedures was upheld," Gannon said. The "members of the Board of Commissioners believed the county needed to take an active role in upholding the county's adopted ordinance and signed the letter urging the CEO not to issue the building permits."

The Board of Commissioners will consider the issue of zoning for cell towers again soon when it votes on a new zoning ordinance.

"After considerable public input and a thorough investigation of relevant federal legislation, the current proposal would allow cellular antennas within or attached to nonresidential structures legally permitted in single-family neighborhoods," Rader stated.

These uses would include houses of worship or other institutions that are legally permitted to be of sufficient height to make a cellular antenna attractive to a carrier.

"The new proposal would not allow the cell towers that were the object of the T-Mobile controversy," Rader stated.

Stephanie Byrnes, a member of No Briarlake Tower, called the end of the legal battle "fabulous" and "just amazing."

"I didn't fathom that that could even happen and it did," she said. "I felt confident that we would win. What I was concerned about was that we might win against T-Mobile but then another one might come along like AT&T."

"The law says you can't have cell towers in residential areas," Byrnes said.

"T-Mobile was going to try and get around that and they used the school board to try to do that—to try to get their towers in residential areas via the school property. That's underhanded."

"The concern was that it would be a misuse of public land," Byrnes said.

"The school system is [a] steward of public land. They are granted public land to operate in order to educate the children. The school board at the time...didn't make a decision that put the kids first. They made a decision that put the hope for money first."

Byrnes said the victory is "a huge win for DeKalb County."

"We were fighting for the children," she said. "That land is for the children. It's not for private gain."

1,282 total views, 2 views today

**Leave a Comment - Comments may take up to 48 hours to appear**

EXHIBIT 6

**MINUTES OF THE  
MENDHAM BOROUGH BOARD OF ADJUSTMENT  
July 7, 2010  
Garabrant Center, 4 Wilson Street, Mendham, NJ**

**CALL TO ORDER**

The regular meeting of the Board of Adjustment was called to order by Chair Santo at 7:30 p.m. at the Garabrant Center, 4 Wilson Street, Mendham, NJ.

**CHAIR'S ADEQUATE NOTICE STATEMENT**

Notice of this meeting was published in the Observer Tribune on January 14, 2010 and the Daily Record on January 11, 2010 in accordance with the Open Public Meetings Act and was posted on the bulletin board of the Phoenix House.

**ATTENDANCE**

Mr. Palestina – Absent  
Mr. Peck – Absent  
Mr. Peralta – Absent  
Mr. Schumacher – Present  
Mr. Seavey - Present

Mr. Smith – Present  
Mr. Santo – Present (Omnipoint)  
Mr. Ritger, Alt. I - Present  
Mr. McCarthy, Alt II – Present

Also Present:

Mr. MacDonald, Attorney  
Mr. Hansen, Engineer

#####

**PUBLIC COMMENT**

Chair Santo opened the meeting to public comment or questions on items that were not on the agenda. There being none, the public comment session was closed.

#####

**APPROVAL OF MINUTES**

On motion by Mr. Seavey, second by Mr. Smith and all members being in favor, the minutes of the June 2, 2010 regular meeting of the Board were approved as written.

**HEARING OF CASES**

**Omnipoint Communications, Inc. and New York SMSA Limited Partnership d/b/a Verizon Wireless** – Use and Other required variances: **Resolution**  
Block 801, Lot 20, Kings Shopping Center

Mr. MacDonald, Esq. presented the following draft resolution to the Board:

**RESOLUTION OF FINDINGS AND CONCLUSIONS  
BOARD OF ADJUSTMENT**

7, 2009, May 13, 2009, June 3, 2009, July 7, 2009, August 4, 2009, September 1, 2009, October 6, 2009, November 4, 2009, November 17, 2009, December 1, 2009, January 5, 2010, February 2, 2010, March 2, 2010, April 6, 2010 (Attorney Summations) and June 2, 2010 (Board Deliberations and Vote) has made the following factual findings:

1. According to the public record and the application materials the subject property is currently owned by V-Fee Realty Investment, LLC (Thomas Maoli, Managing Member). The Record indicates that the current owner purchased the property from Mendham Investment Company, LP on or about December 20, 2005.

2. The prior owner(s) have processed several applications before the Borough Boards over the years and the Borough files contain a "Sealed Survey" prepared by Gary V. Marmo (NJ License # 37599) as an employee of D.P. Sweeney & Associates. This Survey is originally dated September 26, 2005 and it has been revised through May 25, 2007.

3. Based upon the D.P. Sweeney Survey (hereafter "the Survey") and the various Exhibits in this Record, the Board is able to deduce that the property (which is most commonly referred to as "the King's Shopping Center") is 13.65 acres and it is located on the northerly side of the primary east/west roadway running through the Borough of Mendham which is known as East Main Street, Route 24, County Road #510, etc.

4. The Survey indicates that the shopping center has 508 feet of frontage on East Main Street and extends northerly to a depth of approximately 1,198 feet. The first 750 feet of the property contain the "King's Shopping Center" which generally includes three (3) separate primary buildings along with the parking areas and access driveways associated with the supermarket (which occupies all of one 27,504 square foot building). The other two buildings shown on the Survey contain several retail and service businesses including: the Bank; the Apothecary; four (4) eat in restaurants; a deli; a liquor store; a dry cleaner; a book store; a jeweler; and, other similar uses.

The rear 450 feet of the property contains separate additional improvements and parking areas commonly known as the "Mendham Health and Racquet Club". These additional improvements include a 53,914 square foot building, an outdoor swimming pool with related patios and play areas, a 677 square foot trailer (that appears to be used as a babysitting facility) and a small to moderate sized physical therapy facility in the left rear (northwest corner of the principal building).

5. The applicants, Omnipoint and Verizon Wireless, with the consent of the Owner, have requested municipal zoning permits and approvals as necessary conditions precedent to obtaining construction permits to install and erect a Wireless Telecommunications Facility at the King's Shopping Center site.

6. In late 2007, when the Borough of Mendham became aware of the applicants' intention to file this joint request for Variance and Site Plan approvals, it advised counsel for the applicants that the Borough Governing Body and the Borough Planning Board were in the final stages of developing and adopting a "Wireless Telecommunications Ordinance" in furtherance of the 2006 review and update of the Public Utilities Plan Element of the Borough of Mendham Master Plan. The final version of the Borough's first Wireless Telecommunications Ordinance (Ordinance #4-08) was adopted by the Borough Council after second reading on May 5, 2008. As noted above, the first of several Public Hearings on this matter was conducted one month later on June 4, 2008.

7. The applicants presented expert testimony and approximately 29 Exhibits to the Board in connection with radio frequency and system design issues related to the desired location and height of their proposed monopole/stealth flag pole, the related equipment compound, the site design and engineering issues related to placement of the facilities, the criteria and methodology related to site selection for this facility, photographs of the proposed site from various perspectives and related photographs depicting possible views of a simulated version of the stealth flag pole tower.

8. The Board spent considerable time reviewing what became a six (6) page set of drawings that were signed and sealed by Robert J. Foley, Prof Engineering License #GE-038356 on behalf of the CMX engineering firm. The Drawings were originally dated April 12, 2007 and were eventually revised through November 19, 2008. Mr. Foley's Site Plan materials refer back to the above mentioned D.P. Sweeney Survey as a data source. Sheet 2 of 6 of the CMX plans labeled Z-1 "Site Plan & General Notes" sets forth the Bulk/Setback requirements of the East

10. In an effort to avoid interference with the use of parking lot aisles, parking spaces and with customer foot traffic, the Board requested that the applicants amend their plans to locate the monopole and equipment shelter to an area further north and away from Building "C". The alternate location was adjacent to the semi landscaped parking median to the rear of Building "B" (King's) and in front of Building "D" (the Health & Racquet Club). This alternate location still required a variance from Section 215-12.6B (9) as not being in the Rear Yard of the property, as that term is defined in Section 215-1 of the Mendham Code.

11. In an effort to minimize the total number of wireless telecommunications towers within the Borough, the Board requested that the applicants investigate the possibility of increasing the height of the monopole to 130 feet even though Section 215-12.6C (2) sets forth the Condition that:

No WT tower shall exceed a height of 120 feet.

12. The applicants amended their plans to reflect the alternate location for the Equipment Compound and the monopole and they added the additional 10 feet of height to the monopole. The applicants technically amended their application to request a deviation from the Height Condition and deleted the need for a deviation from the side setback Condition. As noted above, relief from the Rear Yard Condition was still necessary.

13. In addition to the input and reports customarily received from the Borough Engineer and the Borough Planner, the Board enlisted the services of Bruce A. Eisenstein, Ph.D., P.E. of The Consulting Group. Dr. Eisenstein is a Professor of Electrical and Computer Engineering at Drexel University in Philadelphia, PA. The Board has relied upon Dr. Eisenstein's advice and expertise in interpreting the testimony, exhibits and arguments related to radio frequency propagation, telecommunications and cellular telephony.

14. In support of their burden to prove that the property remains suitable to be used by each of them as a Wireless Communications Facility despite an inability to comply with one or more Conditions of the Mendham Wireless Telecommunications Ordinance, the applicants presented Testimony and 29 Exhibits from: Glenn Pierson, General Manager of PierCon Solutions LLC; Robert A. Foley, P.E. from CMX engineering in connection with the above described Site Plans; Timothy M. Kronk, a NJ licensed Professional Planner who provided a May 21, 2008 Planning Report and an April 25, 2008 Visual Analysis; and, an RF Compliance Assessment and Report by Daniel F. Collins of Pinnacle telecom Group, LLC.

15. Mr. Irving Isko, who is a long time resident of Mendham Borough and a former member and Chairman of the Board of Adjustment, participated as an Interested Party during the hearings and deliberations on this application. Mr. Isko was represented by counsel who participated by cross examining the applicants' radio frequency expert, presented a separate radio frequency expert in rebuttal, cross examined Dr. Eisenstein, presented a separate planning expert in rebuttal and set forth several legal arguments generally in opposition to the application. Mr. Isko presented approximately 26 Exhibits into the Record including various resolutions, transcripts and pleadings from other wireless applications in the Borough and other municipalities.

16. In addition to the foregoing, Mr. Isko and his former counsel, David Schechner, Esquire, presented Testimony and presented several of the above described pleadings and transcripts in support of an argument that one or more of the applicants before the Board had made a binding and enforceable agreement or settlement that included a stipulation that they, or it, would not construct any additional Wireless Telecommunications Facilities in the Borough of Mendham. Due to the paucity of any clear and precise documentation related this technical legal argument, the Board is unable to arrive at an informed finding and conclusion. The Board also notes its reservation as to whether it has jurisdiction to make such a determination. The Board has not factored this issue into its final decision herein.

17. Several other members of the public attended many of the Public Hearings. As the Transcripts indicate, the members of the public raised various questions and made several statements related to their concerns and preferences related to the application.

18. Mr. Frank Lupo who resides on Dean Road in Mendham Borough, elected to vigorously participate in the proceedings. Mr. Lupo was not represented by counsel, although he was given considerable leeway to question witnesses, present Exhibits (approximately 29), make statements and champion the cause of Alternative Telecommunications Systems, particularly

21. The Board has considered the fact that the applicants are both FCC licensed carriers.

22. The Board has considered that the Borough has declined to make the Police Station property available to the applicants for installation of a wireless telecommunications facility.

23. The Board is aware that numerous parties have objection to the visibility of a monopole at this location. The Board has attempted to balance that objection with the imputed knowledge that the Planning Board and the Governing Body would have understood that at least a portion of any permitted 120 foot monopole in the East Business District would be visible from the Main Street Corridor and various historically relevant locations in the Borough

24. The Board does, however, find that the combined uses of the King's Shopping Center and the Mendham Health & Racquet Club on this one property do render it the busiest public use property in the Borough. The only property that might compare in size and intensity of public use would be the High School on a busy school/activity day.

25. The Board interprets the Rear Yard Condition to address a dual zoning and planning purpose: A) assistance with the goal of visual screening by having a WT facility behind a building; and, B) removal of a WT facility from the busiest pedestrian use areas of a property by having it in the rear yard.

WHEREAS, the Board has determined that the Use Variance and related Site Plan Approval requested by the Applicants, OMNIPOINT COMMUNICATIONS, INC. and NEW YORK SMSA PARTNERSHIP d/b/a VERIZON WIRELESS, cannot be granted without substantial detriment to the public good or without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Borough of Mendham for the following reasons:

1. After considering all of the factual testimony, expert testimony, and expert opinion and after reviewing and analyzing all of the Exhibits, the Board finds that the inability to comply with the Rear Yard Condition due to the unique and expansive development of the King's Health Club property renders it unsuitable for this Conditional Use.
2. After considering all of the factual testimony, expert testimony, and expert opinion and after reviewing and analyzing all of the Exhibits, the Board concludes that there are no available conditions or alternatives that it might suggest or impose to ameliorate the degree and impact of the deviation from the Rear Yard Condition.
3. The Board interprets the recent amendments to the Borough Zone Plan to indicate the legislative intent that Wireless Telecommunications Facilities are now permitted Conditional Uses in the East Business District. The Board however, finds that the unique facts of this property render it inappropriate to accommodate this additional use.
4. The Board acknowledges that it requested consideration of the 130 foot monopole height and confirms that is not a basis for this negative decision.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Borough of Mendham on this 7th day of July 2010, that the Decision made by this Board on June 2, 2010 to DENY, for the reasons set forth herein, the Use Variance applications (the related Site Plan application having become moot) of OMNIPOINT COMMUNICATIONS, INC. and NEW YORK SMSA PARTNERSHIP d/b/a VERIZON WIRELESS, be MEMORIALIZED herein in accordance with the requirements of *N.J.S.A. 40:55D-10g*.

Responding to Mr. Ritger's question as to why he had chosen to indicate that location in the rear yard was "impossible", Mr. MacDonald, Esq. clarified that there is no suitable location. He referenced a previously submitted informal analysis that indicated the presence of wetlands and buffers. It could not be placed in the side yard, actual rear yard or wetlands/transition areas, unless there might be some previously paved areas. There are many problems given the development of the site.

Mr. Seavey made a motion to approve the resolution. Mr. Schumacher seconded.

ROLL CALL: The result of the roll call of eligible voters was 5 to 0 as follows:

In Favor: Schumacher, Smith, Ritger, Seavey, Santo  
 Opposed: None  
 Abstentions: None



**Michael C. Farina** – Use Variance  
Block 203, Lot 84, 65 West Main St.

Present: Michael C. Farina, Applicant  
Mary Anne Farina, Applicant

Mr. MacDonald, Esq. reviewed the public notices and advised that the Board has jurisdiction to proceed.

Mr. Hansen reviewed the Ferriero completeness review letter of June 16, 2010 with the Board. He recommended the requested waivers. There being no comments or questions by members of the Board, a vote on completeness was taken.

Mr. Smith made a motion to deem the application complete. Mr. Ritger seconded.

ROLL CALL: The result of the roll call was 5 to 0 as follows:

In Favor: Schumacher, Smith, Ritger, McCarthy, Seavey  
Opposed: None  
Abstentions: None

The motion carried. The application was deemed complete. The hearing would commence.

Mr. Farina testified that he currently lives in Randolph and has three children. He is a self-employed CPA with a tax practice. He has had an office in Jockey Hollow for 14 years. The location is owned by his uncle who is now selling it. The Travis home, 65 West Main St., would be perfect as a family home and an office.

He continued that there is a 1,248 sq. ft. office that was used for a dental practice for 30 years. His accounting business is less intensive than the dental business. As he was Mr. Travis' accountant he knows that he had 15 to 20 patients. Most of the accounting business is conducted by mail and his traveling to Florida. He has a smaller client base. During the peak season of February 15 and April 15, he would expect to have 2-3 clients visit per day on average. The other 10 months there would be 2 to 3 per week. There will be fewer cars and traffic.

Addressing the number of employees, Mr. Farina stated that Mr. Travis had 2 to 3. He would need two, a full time secretary and a part time bookkeeper. There are no associates or partners. He did clarify that his father owns 2% of the business, but it has been transferred to him with his father spending October through May in Florida, coming back to visit.

In terms of the site itself, Mr. Farina explained that he has no plans to change the outside of the property. There are currently 8 parking spots and a garage. He would need two parking spots. He would not affect the floor plan as he would move in with minimal minor changes. There is a sign post located at the end of the driveway with a lamp on the top of the post. The size of the sign, 2 sq. ft., is within the existing sign ordinance. He would propose only the wording "65 East Main, CPA Accountant". There would not be a name. He distributed a picture of the sign to the Board.

In deliberations, Board was favorable to the application stating it was a de-intensification of the existing use.

Vice Chair Seavey opened the meeting to questions by the public. There being none, the public session was closed.

Responding to Mr. Seavey on the hours of operation, Mr. Farina stated that his business is mainly conducted during the day. In the busy season he may have 3 appointments after 5 p.m.

The motion carried. The application was approved. Mr. MacDonald, Esq. will prepare a resolution memorializing the action for the Tuesday, August 3, 2010 regular meeting of the Board.

#####

**106 Mendham LLC** – Use Variance  
Block 801, Lot 12, 106 East Main St.

Present: Anthony Sposaro, Esq., Attorney for the Applicant  
Robert Berlant, Property Owner  
Joseph Jaworski, Engineer for the Applicant  
Robert Romeo, Barbershop Owner

Mr. MacDonald, Esq. reviewed the public notices and advised that the Board has jurisdiction.

Mr. Hansen reviewed the completeness items as identified in the Ferriero Engineering letter dated June 21, 2010. Board had no questions or comments.

Mr. McCarthy made a motion to deem the application complete. Mr. Ritger seconded.

ROLL CALL: The result of the roll call was 5 to 0 as follows:

In Favor: Schumacher, Smith, Ritger, McCarthy, Seavey  
Opposed: None  
Abstentions: None

The motion carried. The application was deemed complete. The hearing would commence.

Mr. Sposaro, Esq. provided a history of the property for the Board stating that the Planning Board approved the site plan in 2008. The new building has replaced two older buildings. The plans were for a bank to occupy 8,250 sq. ft., Coldwell Banker, 5,000 sq. ft. and creation of a one bedroom COAH apartment. Coldwell Banker has rethought their use of space and is not using 1,136 sq. ft. of the space. The proposal is for a barbershop to occupy that space.

Continuing, Mr. Sposaro, Esq. stated that a use variance is required for the barbershop use. It is not a permitted use in the Limited Business Zone. In addition to the variance for the use, a variance is needed for a barber pole and for parking. The applicant will be going to the Planning Board for review of a larger freestanding sign or the addition of a third freestanding sign. The pending bank occupant is requiring a larger sign. The proposed storage shed is to store the Coldwell Banker signs. He also noted that based on a letter from Morris County, the site plan was exempted from County approval on April 7, 2008. He assumes that this plan will also not require approval as there are no changes to the site.

After a short discussion among Mr. Sposaro, Esq., Mr. MacDonald, Esq. and Mr. Seavey on whether the parking and barber pole associated with the barbershop should be considered by the BOA or the Planning Board. After discussion, Vice Chair Seavey recommended that since the Planning Board reviewed the original site and knows the past testimony on signage and traffic patterns, they should decide the parking and the signage, i.e. the barber pole. Messrs. Sposaro, Esq. and Mr. MacDonald, Esq. agreed.

Mr. Romeo testified that he has been a barber for 34 years. He has had a shop in Chester for three years and before that was located in Morristown with two shops. "Men of Mendham" will only be for men and boys. It will provide the services of hair cutting and neck and side burn shaves. There will not be any hair dyeing or other like services that are done in a full service beauty parlor. He plans on having four chairs.



Commenting on the floor plan, Mr. Ritger suggested that the back door facing the parking lot would have made a better entrance.

In discussion on the parking, Mr. Sposaro, Esq. stated that worse case he would require 21 parking spaces including barbers, receptionist and patrons. Mr. Jaworski explained that from an ordinance standpoint the 1136 sq. ft. for a retail unit would require 7 spaces. There is no specific requirement for a barbershop. Currently as an office use 4-5 spaces are required representing a difference of two. There are 33 spaces on site and a drive-through for the bank. They do expect different peak times for the businesses.

Responding to Mr. Seavey on his request for further clarification on people waiting, Mr. Romeo stated that from his experience they may leave or call for an appointment. He is planning on getting a camera for internet transmission so that people can see if there are others waiting. Addressing Mr. Ritger on whether parking would be assigned, Mr. Sposaro, Esq. stated that it would not. Mr. Berlant added that there would not be any assigned spots, but the person renting the COAH unit has a stipulation in their lease to park as far from the door as they can to keep open commercial spots. He explained that the barbershop offered another professional use in the building and would have off peak hours compared to the other businesses.

Mr. Sposaro, Esq. requested that they maintain flexibility with the location of the door either on the side or in the rear. That would flip the location of the waiting area. Mr. Hansen advised that he had no issue with that, but that there would need to be a formal plan filed.

Mr. Hansen reviewed the Ferriero technical report. In response to his question on the Historic Preservation review, it was noted that there was a review and a report was generated.

Vice Chair Seavey opened the meeting to the public. There being no public comments or questions, the public portion was closed.

In deliberations, Board members were in favor of the use, but some did have a concern with the parking. Mr. Ritger stated that when Coldwell Banker has a meeting, the lot is filled. Mr. Schumacher noted that there is no on-street parking. Mr. Seavey noted that when economic times change Coldwell Banker will be selling more homes.

In terms of the use, Mr. Seavey noted that there had previously been a beauty parlor in one of the old buildings on the site. Mr. Berlant confirmed the beauty shop use and added that there had also been an apartment above it. They now have the COAH unit in the new building. Board noted that there had previously been two barbers in Mendham and now there were none. There was a barber pole. There is a need in the Borough.

Mr. Schumacher made a motion to approve the application subject to submission of the variance plan and parking and signage approval by the Planning Board. Mr. Smith seconded.

ROLL CALL: The result of the roll call was 5 to 0 as follows:

In Favor: Schumacher, Smith, Ritger, McCarthy, Seavey  
Opposed: None  
Abstentions: None

The motion carried. The application was approved. Mr. MacDonald, Esq. will prepare a resolution memorializing the action for the August 3, 2010 regular meeting of the Board.

#### ADJOURNMENT

There being no additional business to come before the Board, on motion duly made, seconded and carried, Vice Chair Seavey adjourned the meeting at 9:20 p.m. The next regular meeting of

July 7, 2010

Board of Adjustment

8

EXHIBIT 7

Legal Research  
Learn the Law  
Find a Lawyer

430 F. 3d 529 - Omnipoint Communications Inc v. The City of White Plains J a 04-3286-Cv

Home

Federal Reporter, Third Series

430 F.3d

## No Long Term Contract

\$0 To Enroll, Offer Expires 2/29! Get an In-Shape Gym Membership Now

### 430 F3d 529 Omnipoint Communications Inc v. The City of White Plains J a 04-3286-Cv

430 F.3d 529

OMNIPOINT COMMUNICATIONS, INC., Plaintiff-Appellee,

v.

THE CITY OF WHITE PLAINS, Defendant-Appellant,

The Planning Board of The City of White Plains, Mary Cavellero, James J. Gould, Russell Imlay, John Garment,

Terrence Guerriere, Robert Stackpole and Juan Carlos Roskell, Defendants,

Congregation Kol Ami, A New York Religious Corporation, Movant.

Docket No. 04-3286-CV.

United States Court of Appeals, Second Circuit.

Argued: June 6, 2005.

Decided: December 2, 2005.

Joseph A. Maria, Joseph A. Maria, P.C., White Plains, N.Y. (Frances Dapice Marinelli, on the brief) for Defendant-Appellant.

Eric S. Aronson, Greenberg Traurig, LLP, Florham Park, NJ (Helen E. Kleiner, Jeffrey W. Greene, on the brief) for Plaintiff-Appellee.

Before: WALKER, Chief Judge, JACOBS and LEVAL, Circuit Judges.

JACOBS, Circuit Judge.

Find Who Owns  
This Number  
Enter Any Phone Number  
Now Get Full Owner Info. Try  
Free!

1

Omnipoint Communications, Inc., a cellular telephone provider, is suing the City of White Plains (the "City" or "White Plains") and its Planning Board (the "Board") alleging (*inter alia*) violations of the Federal Telecommunications Act ("the TCA"), 47 U.S.C. § 332, arising from the Board's denial of Omnipoint's application for a permit to erect a 150-foot cellular communications tower (disguised as a large tree) on a local golf course. On Omnipoint's motion for summary judgment, the United States District Court for the Southern District of New York (McMahon, J.) ruled that the Board's decision was

unsupported by substantial evidence and therefore in violation of the TCA. *Omnipoint Commc'ns v. City of White Plains*, 175 F.Supp.2d 697, 711-17 (S.D.N.Y.2001). Following a damages trial, White Plains was ordered to pay \$1,327,665.24 in actual damages (plus post-judgment interest) and \$231,152.84 in attorneys' fees. *Omnipoint*

*Commc'ns v. City of White Plains*, 01 Civ. 3285, at 6 (S.D.N.Y. May 6, 2004) (Yanthis, *M.J.*) (memorandum decision and order awarding damages and attorneys' fees). On appeal by the City, we conclude that the Board's decision was supported by substantial evidence, and reverse.

2

\* The TCA limits state and local regulation "of the placement, construction, and modification of personal wireless service facilities." 47 U.S.C. § 332(c)(7). Such regulation "(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." 47 U.S.C. §§ 332(c)(7)(B)(i). Further, state and local governments must act on applications "within a reasonable period of time" and may not deny such an application except in a written decision "supported by *substantial evidence* contained in a written record." *Id.* § 332(c)(7)(B) (emphasis added).

3

A savings clause in the TCA provides that, subject to five specific limitations, *see id.* §§ 332(c)(7)(B)(i)-(v), local governments retain express control over the zoning of wireless services facilities:

4

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.

5

*Id.* §§ 332(c)(7)(A). The TCA thus strikes a balance between "two competing aims — to facilitate nationally the growth of wireless telephone service and to maintain substantial local control over siting of towers." *Town of Amherst, N.H. v. Omnipoint Commc'ns*, 173 F.3d 9, 13 (1st Cir.1999).

II

6

Omnipoint is a wireless cell phone provider licensed by the Federal Communications Commission ("FCC"). In an effort to close a coverage gap, Omnipoint decided to build a 150-foot telecommunications tower in White Plains, New York. Imitation branches would be affixed to the cylindrical tower in order to dress it up as an evergreen tree.

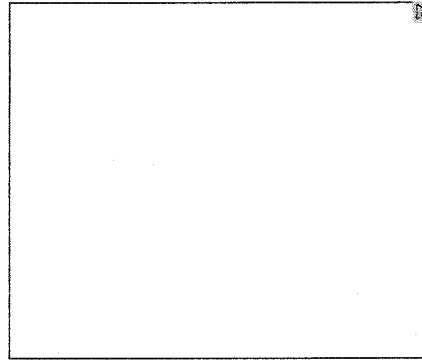
7

On October 19, 1999, Omnipoint signed an Agreement with Fenway Golf Club ("Fenway"), located on the border of White Plains and the Village of Scarsdale, to lease a site for the tower. The Agreement afforded Omnipoint an "Option Period" of two years to obtain government approval for the proposed tower, failing which Fenway had a unilateral right to terminate.

8

In June 2000, Omnipoint applied — on Fenway's behalf — for a special permit from the Board. At the public hearings, there was little question that there is a gap in Omnipoint coverage; the controversy was over the proposed solution. Omnipoint reassured the Board that the proposed tower would have minimal visual impact on the community because a tower disguised as a tree would blend in, camouflaged by the local "mature and deciduous tree line." *Omnipoint Commc'ns*, 175 F.Supp.2d at

701. An Omnipoint expert did a visual-impact study, parking a 150-foot crane at the proposed site, and touring the public roads of the neighborhood to ascertain whether and where the crane was visible. The study concluded that, except for a single property, the crane would be invisible or unnoticeable outside the golf course. Illustrative photographs were taken from the public streets. As the Board pointedly noted, however, residents were not invited to participate in the study, or notified of it.



9

Public hearings continued monthly from July 2000 through March 2001. Throughout, neighbors argued that the tower would be an eyesore. Nearby Temple Kol Ami contended that the tower would cause parents to withdraw their students from its nursery school, and would impair the view from its glass-enclosed chapel. The neighbors' expert testified that a 150-foot tower cannot effectively be disguised as an evergreen in a neighborhood where the tallest evergreen is just 51 feet high. According to other testimony (credited by the Board), the tower would be at least 50 feet taller than the tallest deciduous trees in the landscape. Other experts testified on the neighbors' behalf regarding the anticipated diminution in property values.

10

The Board announced its intention to deny Omnipoint's application at the January 2001 meeting, and formally denied the application in a 25-page resolution adopted at the meeting in March 2001. *See, infra*. Within weeks, Omnipoint sued, alleging that the Board violated the TCA and New York Civil Practice Laws and Rules Article 78, and seeking damages pursuant to 47 U.S.C. § 1983.

11

Later — one day before the October 19, 2001 expiration of the Option Period — Fenway executed a formal agreement with residents, whereby Fenway agreed not to allow the contraction of cell towers in exchange for the residents' acquiescence in Fenway's contested proposal for a maintenance facility. The next day, Fenway terminated the Omnipoint Agreement. Less than two months later, on December 3, 2001, Fenway's Maintenance Facility Application was approved by the Board.

12

In December 2001, the district court decided the parties' summary judgment motions. *Omnipoint Commc'ns*, 175 F.Supp.2d 697. On Omnipoint's motion for summary judgment on Count I, the district court ruled that the Board's decision was unsupported by substantial evidence, *id.* at 711-17, a ruling we now reverse. The district court's other rulings on the other claims are not at issue on appeal.<sup>1</sup>

13

Magistrate Judge Yanthis conducted a damages trial on the § 1983 substantial evidence claim, and in February 2004 directed entry of judgment in the amount of \$1,327,665.24, consisting of damages for costs incurred during the zoning process, damages for lost revenue, damages for the expense of locating an alternative site, and \$231,152.84 in attorneys' fees.

III

14

We review the district court's summary judgment decision *de novo*, *see Young v. County of Fulton*, 160 F.3d 899, 902 (2d Cir.1998), and the Board's decision for substantial evidence, *see* 47 U.S.C. § 332(c)(7)(B)(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."). The latter is a deferential standard, and courts "may neither engage in [their] own fact-finding nor supplant the [ ] Board's reasonable determinations. . . . Substantial evidence, in the usual context, has been construed to mean less than a preponderance, but more than a scintilla of evidence." *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 494 (2d Cir.1999) (internal citation omitted). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (citation omitted).

15

The Board's resolution focused on three considerations: (1) adverse visual impact; (2) diminution of property values; and (3) lack of "public necessity."

16

\* As Omnipoint concedes, aesthetics is a permissible ground for denial of a permit under the TCA. See *Town of Oyster Bay*, 166 F.3d at 495 ("In New York, aesthetics can be a valid ground for local zoning decisions.").

17

Given the 150-foot tower would rise to three times the height of the tallest evergreen tree and would be half again as tall as any other tree in the area, the Board could reasonably conclude (especially given express testimony to that effect) that the tower would be widely visible. In addition, the Board received substantial evidence of the tower's adverse aesthetic impact. We have no difficulty concluding that the Board's rejection was based on reasonable and substantial evidence.

18

Omnipoint argues, however, that the Board erroneously focused on the statements by agitated neighbors and their expert, rather than on the testimony of Omnipoint's expert and her visual impact study. We disagree.

19

First, the Board was free to discount Omnipoint's study because it was conducted in a defective manner. The study concluded that the tower "would be visible from only one property outside the Golf Course." However, because the study was conducted without notice to the Board or community, the observation points upon which its conclusion was based were limited to locations accessible to the public — mostly public roads — and no observations were made from the residents' backyards, much less from their second story windows. Moreover, the study suffered from the further defect that it failed to consider the tower's visibility in winter, when deciduous trees are bare. Accordingly, the study did not foreclose a finding that the tower would be widely visible.<sup>2</sup>

20

Second, the Board was not bound to accept Omnipoint's expert testimony simply because (as Omnipoint contends) it was insufficiently contested by properly credentialed expert testimony. True, the residents' visual impact study was prepared by a landscape architect with limited qualification for that task; but the residents were not required to offer any expert testimony at all. More broadly, this Court has refused "to create by fiat a constitutional requirement that all zoning boards in this Circuit use expert testimony or written studies to support their decisions." *Harlen Assocs. v. Inc. Vill. of Mineola*, 273 F.3d 494, 501 n. 3 (2d Cir.2001).

21

Third, we reject Omnipoint's argument that the Board gave improper deference to community opposition. In *Town of Oyster Bay*, 166 F.3d at 495-96, we declined to rule whether constituent comments amount to substantial evidence, and noted tension between *Omnipoint Corp. v. Zoning Hearing Bd.*, 20 F.Supp.2d 875, 880 (E.D.Pa.1998) (holding that "unsubstantiated personal opinions" expressing "[g]eneralized concerns . . . about the aesthetic and visual impacts on the neighborhood do not amount to substantial evidence"), and *AT & T Wireless PCS v. City Council of Va. Beach*, 155 F.3d 423, 430 (4th Cir.1998) (holding that neighbors' aesthetic concerns could constitute "compelling" evidence for a city council). In this case, some of the residents' comments

may amount to no more than generalized hostility, such as the objection that the tower was being dumped on them rather than on their more affluent neighbors in Scarsdale. At the same time, however, we conclude that the Board had discretion to rely (as it did) on aesthetic objections raised by neighbors who know the local terrain and the sightlines of their own homes. The Fourth Circuit observed in *AT & T Wireless PCS* that "the repeated and widespread opposition of a majority of the citizens . . . who voiced their views — at the Planning Commission hearing, through petitions, through letters, and at the City Council meeting — amounts to far more than a 'mere scintilla' of evidence to persuade a reasonable mind to oppose the application." 155 F.3d at 431. We need not go as far as the Fourth Circuit, however, to decide this case.

22

Here, the observations of self-interested neighbors conflict with an expert study submitted by a self-interested applicant. Though a board is not required to give decisive weight to one over the other, Congress has definitely provided it the ultimate voice in the zoning decision-making process. *See id.* ("Appellees, by urging us to hold that such a predictable barrage mandates that local governments approve applications, effectively demand that we interpret the Act so as always to thwart average, nonexpert citizens; that is to thwart democracy."); 47 U.S.C. §§ 332(c)(7)(A).

23

Omnipoint urges that the residents' objections are tainted by the community's long-standing problems with the golf course, and therefore should have been given no weight. Many residents had long complained about the golf course for reasons unrelated to the proposed tower, including the stench of compost and the noise of maintenance equipment. This argument bears on the weight of the objections raised by some residents, but it does not render all the objections unsubstantiated as a matter of law.

24

Omnipoint charges that the Board colluded with Fenway to allow the Option Period to expire. There is no evidence, however, that the Board was aware of the Option Period clause or its term; indeed, the record reflects that Omnipoint refused to give the Board a copy of the Agreement. And although Fenway secured the neighbors' acquiescence to the maintenance facility the day before the Option Period was due to expire (and was not renewed), there is no evidence that any machinations by Fenway are imputable to the Board.

B

25

The Board credited expert testimony that the tower's adverse visual impact (combined with public perception that cell towers may pose health hazards) would result in a decline in the marketability of homes in the neighborhood. We need not decide whether such testimony by itself would constitute substantial evidence. The Board's ruling on property values is closely related to its determination on aesthetics, and stands on much the same footing.

C

26

Finally, the Board concluded that Omnipoint failed to demonstrate "public necessity" for the tower. In so doing, the Board applied the public necessity standard supplied by the Third Circuit in *Omnipoint Commc'ns v. Newtown*, 219 F.3d 240, 244 & n. 2 (3d Cir.2000), which requires the applicant to show that (1) there is a significant coverage gap in the area; and (2) the manner in which it plans to close the gap is the least intrusive means. We agree with Omnipoint that this was the wrong test, because the standard set forth in *Newtown* addresses the showing an applicant must make before TCA § 332(c)(7)(B)(i)(II) will require a planning board to grant its application.

27

The applicable standard was articulated by the New York Court of Appeals in *Consolidated Edison Co. v. Hoffman*, which concerns the showing that a utility must make under New York law before a zoning board may grant a use variance. 43 N.Y.2d 598, 611, 403 N.Y.S.2d 193, 374 N.E.2d 105 (1978); see also *Cellular Tel. Co. v. Rosenberg*, 82 N.Y.2d 364, 371, 604 N.Y.S.2d 895, 624 N.E.2d 990 (1993) (applying the *Consolidated Edison* test to cell phone company's application to build a new cell site). Under the *Consolidated Edison* "public necessity" standard, a utility must show that (1) its new construction "is a public necessity in that it is required to render safe and adequate service"; and (2) "there are compelling reasons, economic or otherwise, which make it more feasible" to build a new facility than to use "alternative sources of power such as may be provided by other facilities." *Id.* at 371-72, 604 N.Y.S.2d 895, 624 N.E.2d 990.

28

Thus, to establish necessity, Omnipoint had to demonstrate that there was a gap in cell service, and that building the proposed tower at the Fenway site was more feasible than other options. As to the first requirement, the City concedes that there is a "service gap for [Omnipoint's] particular service." This provokes the question whether the necessity can be demonstrated if other providers are meeting the need for cellular coverage, a point that seems to be unsettled.<sup>3</sup> We can avoid that question, however, because we conclude that in any event Omnipoint did not meet its burden on the second *Consolidated Edison* requirement.

29

Omnipoint identified several other potential sites but stated in conclusory fashion that they were unfeasible.<sup>4</sup> Similarly, Omnipoint stated (without documentation) that it was unable to build a less intrusive structure or combination of structures at the Fenway site. However, the record is clear that other cell companies serve the area in which Omnipoint has its gap. From this, the Board could infer that other towers erected by other companies are in the vicinity, and that Omnipoint had the burden of showing either that those towers lacked capacity for an Omnipoint facility or that (for some other reason) those towers were unavailable to bridge Omnipoint's coverage gap. This is not a theoretical consideration, because one finding in the damages opinion is that "the cheapest way for Omnipoint to close its coverage gap would be to co-locate on an existing tower in the Fenway area." *Omnipoint Commc'ns*, 01 Civ. 3285, at 4. Although this alternative surfaced in the damages trial, and is not in the Board's administrative record, it was an available inference from the facts presented to the Board.

30

In short, we conclude that there was substantial evidence to support the Board's decision, and reverse the district court's ruling to the contrary.

IV

31

Even if the Board's decision were unsupported by substantial evidence, we would be required to vacate the district court's damages award, which relied exclusively on § 1983. The Supreme Court's intervening decision in *City of Rancho Palos Verdes v. Abrams*, 554 U.S. \_\_\_, 125 S.Ct. 1453, 161 L.Ed.2d 316 (2005), holds that § 1983 damages are not available for violations of the TCA. Specifically, the Court ruled that a private citizen could not use § 1983 to enforce the TCA against local authorities because Congress did not intend that § 1983 would supplement the judicial remedy expressly provided in the TCA. *Id.* at 1462. As to remedy, the TCA provides:

32

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.



33

47 U.S.C. § 332(c)(7)(B)(v). The Supreme Court opinion does not say whether damages are available under the TCA itself, or what they would be. As acknowledged in *Abrams*, 125 S.Ct. at 1459-60 & n. 3, the Seventh Circuit has held that compensatory damages are "presumptively available" under the TCA, *PrimeCo Pers. Commc'ns v. City of Mequon*, 352 F.3d 1147, 1152-53 (7th Cir.2003), while the District of Massachusetts has held that the "appropriate remedy for a violation of the TCA is a mandatory injunction," *Omnipoint Commc'ns MB Operations, LLC v. Town of Lincoln*, 107 F.Supp.2d 108, 120-21 (D.Mass.2000). However, this appeal does not turn on the creation of new law in this area, and we decline to reach this issue.

## CONCLUSION

34

For the foregoing reasons, we reverse the judgment of the district court.

Notes:

1

The district court denied summary judgment on Count II (alleging unreasonable discrimination in violation of the TCA), *id.* at 717-18, which Omnipoint subsequently withdrew. On the City's motion for summary judgment, the district court dismissed Omnipoint's remaining liability claims (Counts III, IV, and V) and ruled that Omnipoint's § 1983 damages claim (Count VI) is subsumed by the requests for damages in Counts I and II. The rulings as to those counts are not challenged on appeal. *Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir.1998) ("Issues not sufficiently argued in the briefs are considered waived and normally will not be addressed on appeal.").

2

Even a better study, however, might not have assuaged the Board's concern over the visual impact of a man-made evergreen of this scale. As the Board argues, a similar structure along New York's Hutchinson River Parkway has become a Westchester landmark well-known to area commuters

3

New York law suggests that a provider need only establish a gap in its own service regardless of whether cell service is available in the gap area from other carriers: In *Cellular Telephone Co.*, the New York Court of Appeals concluded that a cell phone company demonstrated the requisite "public necessity" by establishing "that the erection of the cell site would enable it to remedy gaps in its service area that currently prevent it from providing adequate service to its customers." 82 N.Y.2d at 373-74, 604 N.Y.S.2d 895, 624 N.E.2d 990 (emphasis added). Our decision in *Sprint Spectrum L.P. v. Willoth* says that the TCA "precludes denying an application for a facility that is the least intrusive means for closing a significant gap in a remote user's ability to reach a cell site that provides access to land-lines." 176 F.3d 630, 643 (2d Cir.1999) (emphasis added). It is unsettled whether, under the TCA, a coverage gap "must be measured from the perspective of the individual provider . . . or the perspective of users." See *Omnipoint Commc'ns, Inc. v. Vill. of Tarrytown Planning Bd.*, 302 F.Supp.2d 205, 217 (S.D.N.Y.2004) (comparing the First Circuit's approach, which looks at the gap from the provider's perspective, with that of the Third Circuit, which holds that the gap must exist from the perspective of the individual customer). We express no opinion on how these lines of state and federal law apply or interact.

4

In a supplemental submission, compiled at the Board's request, Omnipoint listed six alternative scenarios (combining structures at several locations) that could close the coverage gap. According to the Board's resolution, however, Omnipoint's attorney "qualified the [supplemental submission] by stating that the owners of the properties included [on the list] were not approached about the availability of their property for a cellular installation," and, as the Board found, Omnipoint "[made] no suggestion that any of [those] alternatives [were] feasible without the consent of a willing owner."

Print Email  
Short URL:

Top Local Lawyers



**Rachel Miller**  
Criminal, Traffic,  
Juvenile Law,  
[see profile](#)



[Learn more about Lawyer.com Membership](#)

32%  
off

ADVENTURE MEDICAL KITS ...

(346)

~~\$28.57~~ **\$19.37**

Shop now

VOODOO TACTICAL  
~~\$29.95~~ - ~~\$39.74~~

ADVENTURE...  
**\$13.58**

Like Share 1,478 people like this. Sign Up to see what your friends like.

LEGAL RESEARCH

Practice Areas

PRACTICE AREAS

Accidents & Injuries	Employment
Bankruptcy & Debt	Family & Estates
Business	Government

Consumer Protection

Litigation

Criminal Law

Real Estate

Home  
Federal Reporter, Third Series  
430 F.3d

Home  
Browse OpenJurist  
Learn the Law  
Terms of Use

Recommended for You



Tighten Skin & Remove Wrinkles In Under 2 Minutes



Mom Discovers 2 Simple Steps To Lose Belly Fat



Jennifer Lied To The World About Her 80lbs Weight Loss



Mom Shocks Doctors With \$4 Skinny Pill



Single Russian Girls Looking For Older Men



'Steroid Alternative' Putting Gyms Out of Business

Ads by PropelMedia

COUNTY OF EL DORADO  
STATE OF CALIFORNIA

PC 2/25/16  
#4  
133 pages

-----X  
In the Matter of the Application of

**Verizon Wireless c/o Epic Wireless c/o Mark Lobaugh, for  
a Special Use Permit**

Premises: 4131 Birdseye View Lane  
Placerville, CA 95667

**MEMORANDUM  
IN OPPOSITION**

**Special Use Permit # S15-0004**  
-----X

**MEMORANDUM IN OPPOSITION**

Respectfully Submitted,

Linda Stevens, 1100 Trails End Court, Placerville, CA 95667

Janet Barbieri, 1057 Shoreline Drive, Placerville, CA 95667

16 FEB 23 PM 3:47  
RECEIVED  
PLANNING DEPARTMENT

TABLE OF CONTENTS

Preliminary Statement.....4

Statement of Facts.....5

Point I      It is Beyond Dispute That the Proposed Nine (9) Story Cell Tower  
is Not Necessary for the Applicant (*Verizon*) to Provide  
Personal Wireless Services Within El Dorado County.....6

    A.      The Call & Text Logs.....8

    B.      *Verizon's* Coverage Map.....9

    C.      The Applicant has Wholly Failed to Establish that there are no Less  
Intrusive Alternative Sites Available.....10

Point II      *Verizon's* Application Must Be Denied Because it Does Not Comply with the El Dorado  
County Ordinance Code .....12

    A.      *Verizon's* Application Must be Denied, Because the Proposed Tower Would Inflict  
Upon the Rural Neighborhood the Very Impacts Which the  
Provisions of the County Code Were Specifically Intended to Prevent.....12

        (i)      The Proposed Installation Will Inflict a Dramatic  
and Wholly Unnecessary Adverse Impact Upon  
the Aesthetice and Character of the Area.....12

        (ii)      The Proposed Installation Will Inflict a Substantial  
and Wholly Unnecessary Loss in the Values of the  
Adjacent and Nearby Residential Properties.....14

    B.      *Verizon's* Application Must be Denied Because the Proposed Installation Does Not  
Meet the Standard for a Special Use Permit.....17

    C.      *Verizon's* Application Must be Denied Because the Proposed Installation Will Not  
Utilize Co-Location.....18

    D.      *Verizon's* Application Must be Denied Because the Proposed Installation Would  
Be Taller than the Maximum Building Height for Land Zoned RE-10.....19



Point III      *Verizon's* Application Must Be Denied Because it Does Not  
Comply with El Dorado County General Plan .....19

Point IV      *Verizon's* Application Should be Denied Because § 6409(a) of the Middle  
Class Tax Relief and Job Creation Act of 2012 Would Allow Verizon to  
Subsequently Increase the Size of the Proposed Cell Tower Without Prior  
Zoning Approval. ....20

Point V      *Verizon's* Application Should be Denied Because its Proposed  
Installation Does Not Provide a Sufficient Fallzone or Safezone.....21

Point VI      *Verizon's* Application Must be Denied Because the Applicant's Photo Submission is  
Defective and Should be Disregarded Entirely.....25

Point VII      To Comply With the TCA, *Verizon's* Application Should Be Denied  
in a Written Decision, Citing the Evidence Provided Herewith.....26

Conclusion.....27

### **Preliminary Statement**

This memorandum is being submitted by, and on behalf of, multiple homeowners whose homes are situated in close proximity to the tower installation proposed for construction at 4131 Birdseye View Lane, Placerville, CA 95667.

The applicant, *Verizon Wireless c/o Epic Wireless c/o Mark Lobaugh*, (*hereinafter "Verizon"*), seeks to install a nine (9) story monopine cell tower in close in the heart rural neighborhood, in a location where no existing structure currently stands taller than two (2) stories in height.

As the evidence submitted herewith makes indisputable, the current application should be denied because: (a) the tower is wholly unnecessary for the applicant (*Verizon*) to provide personal wireless services within the County, (b) the proposed tower would violate the El Dorado County Ordinance Code, (c) the proposed cell tower would violate the El Dorado County General Plan and (d) the erection of a nine (9) story tower would inflict upon the surrounding homes and rural neighborhood the very adverse impacts for which those provisions of the Zoning Ordinance Code were specifically enacted to prevent.

Finally, even if this wholly unnecessary tower was actually deemed necessary, there are several alternative locations where such a tower could be built and inflict less severe adverse impacts upon the community.

As such, the rural homeowners, on whose behalf this Memorandum is submitted, respectfully argue that the application should be denied, and they seek to ensure that it is denied in a manner which does not conflict with the Telecommunications Act of 1996.



### **Statement of Facts**

*Verizon* seeks to construct a nine (9) story communications tower on a parcel of property owned by Eric and Elizabeth Johanson in a rural neighborhood at 4131 Birdseye View Lane, Placerville, CA 95667.<sup>1</sup>

*Verizon* is engaged in the business of providing cellular phone service in the County of El Dorado, and it is beyond argument that *Verizon* does not need this tower to provide personal wireless services within the County of El Dorado because *Verizon* has already saturated the area with wireless coverage.

*Verizon* has presumably obtained an option to lease a small section of property from Eric and Elizabeth Johanson, upon which it seeks to construct a nine (9) story wireless telecommunications facility in close proximity to roughly forty (40) homes, in a rural area where no other structure stands more than two (2) stories in height.

Development and use of the small leased parcel will include the construction of a 46.5 foot x 22 foot compound fenced in by a six foot tall chain link fence, within which would be built: (a) a one ninety (90) foot tall stealth monopine cell tower structure, (b) one 33 foot by 20 foot steel platform, (c) one 16 foot by 11.5 foot equipment shelter and (d) one 30 kw standby diesel generator with a 132 gallon tank, all of which would be accessible via a 12-foot wide access easement on the property at 4131 Birdseye View Lane, Placerville, CA 95667.

As discussed herein below, *Verizon's* application for a special use permit should be denied because the proposed cell tower is not necessary for *Verizon* to provide personal wireless services

---

<sup>1</sup> See Exhibit "A," *Verizon's* application and the revised notice of public hearing.

within El Dorado County, and construction of the nine (9) story cell tower would not only violate the El Dorado County Ordinance Code, but would inflict upon the nearby homes the very adverse impacts which the Code was enacted to prevent.

### **Point I**

#### **It is Beyond Dispute That the Proposed Nine (9) Story Cell Tower is Not Necessary for the Applicant (*Verizon*) to Provide Personal Wireless Services Within El Dorado County.**

Under the Telecommunications Act of 1996, a local government cannot deny an application for the installation of a cell tower, if the denial of such an application would "***prohibit***" the applicant from providing personal wireless service in the area where it proposes to install the new tower.<sup>2</sup>

To establish that a denial would "prohibit" it from providing wireless services, an applicant must prove both parts of a two (2) part test.

First, it must prove that it suffers from "a significant gap" in its personal wireless services. Second, it must establish that the proposed installation is the "least intrusive means" of remedying such gap, meaning that there are no less intrusive alternative locations. See T-Mobile Central LLC v. Charter Township of West Bloomfield, 691 F3d 794 (6th Cir. 2012).

The sole purpose for which *Verizon* seeks to erect this nine (9) story cell tower in the heart of a rural neighborhood is in pursuit of the profits it will reap from not having to lease space on other carriers' towers. Even in *Verizon's* Project Support Statement, *Verizon* does not claim that it suffers from "a significant gap" in personal wireless service (*See* Exhibit "A"). The letter states

---

<sup>2</sup> *See* 47 U.S.C.A. §332(c)(7)(B)(i)(II).

that:

The tower will help alleviate an area of poor coverage and inadequate capacity within this service area, which causes reoccurring lost calls and ineffective service. This site will relieve inadequate capacity in the area due to high cell phone and broadband usage in the greater Arrowbee Lake area.

*See Exhibit "A"*

It is respectfully submitted that the proffered language is not merely hollow, but does not, and cannot, satisfy *Verizon's* burden of establishing that, in reality, there is a significant gap in coverage, as *Verizon* should be required to establish.

A simple review of the language proffered by *Verizon's* Project Support Statement reveals that it consists of nothing more than a series of meaningless phrases such as "the tower will help alleviate an area of poor coverage and inadequate capacity within this service area."

It is beyond argument that *Verizon* cannot claim that it suffers from a "significant gap" in its wireless services within El Dorado County because the evidence submitted herewith as Exhibits "B" and "C" prove that *Verizon* does not have any gaps, much less any "significant gaps", in its wireless service.

Without exception, the most accurate proof of whether or not such a gap exists is call testing. Simply stated, a test is conducted whereby calls, texts and emails are both sent and received using the applicant's service, on telephones situated within the area in which the applicant claims a gap to exist.

If persons are able to both make and receive both telephone calls, texts and emails, and they are able to initiate, maintain and conclude such calls without failure, then it is simply beyond argument that the provider does not suffer from a "significant gap" in its

personal wireless service.

A. The Call, Text & Email Logs

To establish that the proposed nine (9) story tall tower is wholly unnecessary, residents conducted actual call testing employing local wireless services, and recorded call logs as direct evidence of such tests, all of which are collectively annexed hereto as Exhibit "B."

As evidenced by Exhibit "B", actual call testing revealed that those conducting the tests were able to initiate, maintain and conclude a total of nine hundred eighty-four (984) communications, including voice calls, texts, and emails, with nine hundred seventy-seven (977) of those calls, texts, and emails having been initiated, maintained and concluded without interruption, difficulty or loss of service.

The Iona Merideth Call Log

The first fourteen (14) pages of the call logs were prepared by Iona Merideth wherein she recorded actual call testing. Employing *Verizon's* wireless services, Ms. Merideth made and completed voice calls, texts and emails, on 2/13/16, 2/15/16, and 2/17/16, and recorded the date and time of each respective communication, the specific geographic location at which each respective communication was made or received, and whether the communication was a voice call, text, or email.

As reflected within her log, Ms. Merideth was able to send and receive, and to initiate, maintain and conclude a total of seven hundred seventy (770) telephone calls, texts, and emails, without failure or interruption, out of seven hundred seventy-seven (777) attempted telephone

calls, texts, and emails (*See Exhibit "B" at pages 1-10*).

*The Linda Stevens Call Log*

Pages fifteen (15) through eighteen (18) of the call logs were prepared by Linda Stevens wherein she recorded actual call testing. Employing *Verizon's* wireless services, Ms. Stevens made and completed voice calls, texts and emails, on 2/15/16, and recorded the date and time of each respective communication, the specific geographic location at which each respective communication was made or received, and whether the communication was a voice call, text, or email.

As reflected within her log, Ms. Stevens was able to send and receive, and to initiate, maintain and conclude a total of two hundred seven (207) telephone calls, texts, and emails, without failure or interruption, out of two hundred seven (207) attempted telephone calls, texts, and emails (*See Exhibit "B" at pages 15-18*).

In total, the call and text logs reflect that nine hundred seventy-seven (977) communications were successful, which translates to a success rate of over ninety-nine (99.3%) percent.

B. *Verizon's Coverage Map*

Significantly, this over ninety-eight (99.3%) percent call and text success rate is consistent with what *Verizon* has published upon its current coverage map, which *Verizon* has posted on its website.

As is reflected upon *Verizon's* own coverage map, current as of February 16, 2016, *Verizon* has indicated that it has wireless coverage over the entire area which is the subject of

this application.<sup>3</sup>

In view of the forgoing, it is simply indisputable that *Verizon* does not suffer from any significant gap in its wireless coverage in the area that the proposed ninety (90) foot cell tower will purportedly serve. In fact *Verizon* does not claim that there is a significant gap in coverage at all in its application.

C. The Applicant has Wholly Failed to Establish That There Are No Less Intrusive Alternative Sites Available.

*Cost as the Principal Factor in the Proposed Siting of the Facility*

Unfortunately, when seeking to construct commercial wireless installations, wireless companies do not seek to locate their facilities upon sites which would minimize the adverse impacts which such installations would inflict upon nearby homes and/or the community at large.

Instead, the owners of such facilities simply seek to install them at sites which are the least expensive to build upon. There are three (3) principal site criteria that affect the cost of constructing such facilities. They are electrical power, road access and rent.

Driven by a concern for minimizing expenses, siting preferences for these facilities is quite simple. Applicants seek to build upon sites where they secure the lowest rent, are near a power line to which they can attach, and are near an existing road which can be used for access to the installation.

By contrast, building such a facility in a "remote location," and further away from residential areas, would require them to run power lines, either on poles or in trenches, and to install gravel access roads, both of which are expenses they prefer to avoid.

Where, as here, they locate a potential site which would be cost effective, but would inflict adverse impacts upon nearby residences or the community at large, companies typically fabricate purely hollow explanations as to why their chosen site is their only viable option.

In this case, it appears that the low cost of building at its proposed site is why *Verizon* has

---

<sup>3</sup> Attached as Exhibit "C" is *Verizon's* wireless coverage map from February 16, 2016.

failed to give any meaningful consideration to potential alternative sites, which would have far less adverse impacts upon the community.

In its Project Support Statement (*see* Exhibit "A"), *Verizon* lists alternative locations reviewed, but provides no analysis as to why the selected site is the least intrusive one.

As reflected within *Verizon's* plans and project descriptions, a power line is closely situated to the proposed site, and a short gravel driveway will extend to the site.

*Less Intrusive Alternative Sites Are Available*

As detailed herein above, if *Verizon* is given permission to construct its proposed facility at the site it has chosen, such installation would adversely impact many individual nearby residences and the nature of this rural community.

*Verizon* could easily build its desired facility at any of a number of alternative locations at which it would not be closely situated to residential homes, and would have no adverse impacts upon the applicable properties.

By way of example, *Verizon* could build such a facility at alternative locations such as: (a) the Clark Mountain area, (b) the end of Coffey Lane, or (c) on hills north of the neighborhood, or even at a combination of such locations, to remedy any alleged gaps in wireless services which it claims to exist.

Absent from *Verizon's* application is any evidence that *Verizon* has given *meaningful* consideration to any of these, or any other potential alternative locations, at all. *Verizon's* Project Support Statement (*See* Exhibit "A") may reference possible alternative locations, but no meaningful analysis is given showing why those sites are not feasible.

The fact remains, that there are less intrusive alternative locations available for the installation being proposed by *Verizon*. As such, *Verizon's* application for a Special Use Permit should be denied, because granting such application without requiring *Verizon* to

prove that no less intrusive location is possible, would violate both the letter and the spirit of the El Dorado County Ordinance Code.

## Point II

### Verizon's Application Must Be Denied Because it Does Not Comply with the El Dorado County Ordinance Code

- B. Verizon's Application Must be Denied, Because the Tower Would Inflict Upon the Rural Neighborhood the Very Impacts Which the Provisions of the County Code Were Specifically Intended to Prevent
- (i) The Proposed Installation Will Inflict a Dramatic and Wholly Unnecessary Adverse Impact Upon the Aesthetics and Character of The Area.

As is stated within the text of the El Dorado Ordinance Code (hereinafter "EDOC"), "the zoning plan is adopted to promote and protect the public health, safety, peace, morals, comfort, convenience and general welfare" of the property owners of El Dorado County. *See* EDOC §130.06.040. *Verizon's* application should be denied because the installation of such a massive nine (9) tower, so unnecessarily close to residential homes, will adversely affect the visual character and the aesthetics of the adjacent properties, nearby properties, and the community in general.

Within its proposal, *Verizon* proposes to construct a nine (9) story tall cell tower on the top of a hill, where it would be immediately visible to approximately forty (40) homes in the heart of a rural neighborhood, known for its natural beauty, where no existing structure stands more than two (2) stories in height.

As such, the proposed tower would inflict upon the neighborhood, and the homes within it, the very types of adverse impacts which the El Dorado County Ordinance Code was



specifically enacted to guard against.

Collectively submitted as Exhibit “D” herewith, are letters from the homeowners whose homes are in close proximity to the proposed site. Within each of those letters, the homeowners personally detail the adverse aesthetic and other impacts that the proposed installation would inflict upon their respective homes.

As federal Courts have ruled, where a local government is entertaining a cell tower application, it should accept, as evidence, such statements and letters of homeowners, because they are in the best position to know and understand the actual extent of the impact they stand to suffer *See e.g. Omnipoint Communications Inc. v. The City of White Plains*, 430 F2d 529 (2nd Cir. 2005).

Each of the neighboring property owners have provided detailed and compelling explanations of the dramatic adverse impacts their properties would suffer if the proposed installation is permitted to proceed.

Such installation would dominate the skyline, tower over their homes and destroy the views from all areas of their properties and from both inside and outside of their homes.

Such detailed descriptions of the adverse impacts that their respective homes would sustain, and which El Dorado County should properly consider, are collectively submitted herewith as Exhibit “D” from: Burrel and Jeanette Powell, 1020 Shoreline Drive, Placerville, CA; Keith Atwater, 1250 Crooked Mile Court, Placerville, CA 95667; Leslie and Charles Hill, 1445 Arrowbee Drive, Placerville, CA 95667; Roger Keenan, 1020 Trails End Court, Placerville, CA 95667; Chuck and Linda Stevens, 1100 Trails End Court, Placerville, CA 95667; Richard Merideth, 1108 Shoreline Drive, Placerville, CA 95667; Michael & Carmen Wilcox, 4101 Birdseye View Lane, Placerville, CA 95667; Michael and Jennifer Moreno, 1200 Arrowbee

Drive, Placerville, CA 95667; Janet Barbieri and Quang Nguyen, 1057 Shoreline Drive, Placerville, CA 95667; Melvyn Garbett, 4940 Glory View Drive, Placerville, CA 95667; Kay Keenan, 1020 Trails End Court Placerville, CA 95667; CA 95667; Brenda and Dan Burton, 1041 Trails End Drive, Placerville, CA 95667; and Ken and Pauline McClean, 1320 Burnt Shanty Creek Road, Placerville, CA 95667. Additional letters detailing adverse impacts have been placed in the Public Record with the Planning Department.

Once again, all of the adverse aesthetic impacts which the proposed cell tower would inflict upon their respective homes is entirely unnecessary. First, it is unnecessary because *Verizon* does not need the proposed nine (9) story cell tower to provide wireless services within the County. Second, it is unnecessary because there are superior alternative locations where a new cell tower could be constructed, with far less dramatic impacts upon the community. There has been no showing by *Verizon* that this location is the least intrusive location.

(ii) **The Proposed Installation Will Inflict a Substantial and Wholly Unnecessary Loss in the Values of the Adjacent and Nearby Residential Properties**

In addition to the adverse impacts upon the aesthetics and rural character of the area at issue, the construction of such a massive tower at the proposed location would contemporaneously inflict an adverse impact upon the actual value of the several residential properties situated in close proximity to the proposed tower.

Across the entire United States, both real estate appraisers<sup>4</sup> and real estate brokers have rendered professional opinions which simply support what common sense dictates.

When large cell towers are installed unnecessarily close to residential homes, such homes

---

<sup>4</sup> See e.g. a February 22, 2012 article discussing a NJ appraiser's analysis wherein he concluded that the installation of a tower in close proximity to a home had reduced the value of the home by more than 10%, go to <http://bridgewater.patch.com/articles/appraiser-t-mobile-cell-tower-will-affect-property-values>.

suffer material losses in value which typically range anywhere from 5% to 20%.<sup>5</sup>

In the worst cases, towers built near existing homes have caused the homes to be rendered wholly unsaleable.

As has been recognized by federal Courts, it is perfectly proper for a local zoning authority to consider, *as evidence*, the professional opinions of real estate brokers, (as opposed to appraisers) as to the adverse impact upon property values which would be caused by the installation of a proposed cell tower. See Omnipoint Communications Inc. v. The City of White Plains, 430 F2d 529 (2nd Cir. 2005), and this is especially true when they are possessed of years of real estate sales experience within the community and specific geographic area at issue.

First, as evidence of the adverse impact that the proposed tower would have upon the property values of the homes which would surround the tower, annexed hereto as Exhibit "E" is a letter setting forth the professional opinion of licensed realtor and broker Merideth Iona.

Not only has Ms. Merideth been a professional licensed realtor with Merideth Realty Inc. for nineteen years (19), but she has lived and worked in El Dorado County that entire time. As such, she is acutely familiar with the residential real estate market in El Dorado County.

As reflected within her opinion letter (Exhibit "E"), Ms. Iona states that in her professional opinion, the installation of the proposed cell tower will cause a reduction in property

---

<sup>5</sup> In a series of three professional studies conducted between 1984 and 2004, one set of experts determined that the installation of a cell tower in close proximity to a residential home reduced the value of the home by anywhere from 1% to 20%. These studies were as follows:

The Bond and Hue - *Proximate Impact Study* - The Bond and Hue study conducted in 2004 involved the analysis of 9,514 residential home sales in 10 suburbs. The study reflected that close proximity to a Cell Tower reduced price by 15% on average.

The Bond and Wang - *Transaction Based Market Study*  
The Bond and Wang study involved the analysis of 4,283 residential home sales in 4 suburbs between 1984 and 2002. The study reflected that close proximity to a Cell Tower reduced the price between 20.7% and 21%.

The Bond and Beamish - *Opinion Survey Study*  
The Bond and Beamish study involved surveying whether people who lived within 100' of a tower would have to reduce the sales price of their home. 38% said they would reduce the price by more than 20%, 38% said they would reduce the price by only 1%-9%, and 24% said they would reduce their sale price by 10%-19%.

values by approximately 10% to 25% and make those homes more difficult to sell at the reduced prices as well.

Next, annexed hereto as Exhibit "F" is a letter setting forth the professional opinion of licensed real estate agent Curt Tucker.

Mr. Tucker has been a real estate agent with Professional Real Estate Services and has been selling homes in El Dorado County for more than fifteen (15) years. As such, he is acutely familiar with the residential real estate market in El Dorado County.

As reflected within his opinion letter (Exhibit "F"), Mr. Tucker states that in his professional opinion, the installation of the proposed cell tower will cause a significant reduction in property values for the homes in close proximity to the tower and make those homes more difficult to sell at the reduced prices.

Next, annexed hereto as Exhibit "G" is a letter setting forth the professional opinion of certified residential appraiser Bret Satchwell. Mr. Satchwell has been a certified residential appraiser in the Sacramento region (which includes El Dorado County) for approximately fourteen (14) years. As such, he is acutely familiar with the residential real estate market in El Dorado County.

As reflected within his opinion letter (Exhibit "G"), Mr. Satchwell states that in his professional opinion, the installation of the proposed cell tower will cause a reduction to the value of homes in close proximity to the tower and may prevent potential buyers of these homes from even getting a loan from a bank thus making it more difficult to sell these homes at the reduced value.

Next, annexed hereto as Exhibit "H" is a letter setting forth the professional opinion of professional certified appraiser Harvey A. Hartman. Mr. Hartman has been a certified residential appraiser in the Sacramento region (which includes El Dorado County) since 1991. As such, he

is acutely familiar with the residential real estate market in El Dorado County.

As reflected in his opinion letter (Exhibit "H"), Mr. Hartman states that in his professional opinion, the installation of the proposed cell tower would cause a reduction of value to the homes in close proximity to the tower by approximately 5% to 25%.

Lastly, annexed hereto as Exhibit "I" is a letter setting forth the professional opinion of professional licensed realtor Gay Berge. Mr. Berge has been a professional realtor in the El Dorado County for approximately thirty-two (32) years. As such, he is acutely familiar with the residential real estate market in El Dorado County.

As reflected in his opinion letter (Exhibit "I"), Mr. Berge states that in his professional opinion, the installation of the proposed cell tower would cause a reduction of value to the homes in close proximity to the tower by approximately 10% to 20%.

Given the reduction in property values which the nearby homes would sustain, the granting of *Verizon's* application would inflict upon the rural neighborhood the very impacts which the El Dorado Ordinance Code sections were intended to prevent.

Accordingly, its application must be denied.

B. *Verizon's* Application Must be Denied Because the Proposed Installation Does Not Meet the Standard for a Special Use Permit

EDOC § 130.14.210(D)(5)(b) provides that, in El Dorado County, "new towers or monopoles shall be subject to approval of a special use permit by the Planning Commission." In order for a special use permit to be granted, the Planning Commission must find:

1. The issuance of the permit is consistent with the general plan;
2. The proposed use would not be detrimental to the public health, safety and welfare, or injurious to the neighborhood; and
3. The proposed use is specifically permitted by special use permit pursuant to this title

EDOC § 130.22.540

In order for a special use permit to be granted, the Planning Commission must find that the applicant meets all three of these findings. *Verizon* in this case has failed to meet its burden.

First, the issuance of this permit would not be in compliance with the El Dorado County General Plan (hereinafter "EDCGP"). The EDCGP "provides for growth in an environmentally balanced manner, maintains the rural character and quality of the living environment, providing adequate infrastructure while conserving agricultural lands, forest and woodlands, and other natural resources. *See* EDCGP p. 1. The installation of this proposed nine (9) story cell tower on a hill in this community would destroy the rural character of a community where no structure stands over two (2) stories in height. This tower would serve to obliterate the natural beauty that the residents of El Dorado County have come to cherish.

Second, as set out above, the installation of such a tower would be injurious to the surrounding neighborhood. Not only would there be a severe negative aesthetic impact on views from surrounding properties, but property values would be significantly reduced.

Lastly, despite the fact that cell towers are governed by the special use permit process, *Verizon* has failed to meet the first two findings for a special use permit

Accordingly, its application must be denied.

C. *Verizon's* Application Must be Denied Because the  
Proposed Installation Will Not Utilize Co-Location

EDOC §130.14.210(D)(3) encourages "co-location on existing non-building structures or public facilities." *Verizon's* application is for a new nine (9) story tall cell tower. *Verizon* gave no consideration as to whether it's so called "service needs" could be addressed by co-locating on another tower. Because co-location is strongly encouraged in El Dorado County, *Verizon's* application should be denied.

D. Verizon's Application Must be Denied Because the Proposed Installation Would Be Taller than the Maximum Building Height for Land Zoned RE-10

EDOC §130.70.110(F) provides that the maximum building height for structures on land zoned RE-10 is forty-five (45) feet. Because the property on which the nine (9) story cell tower will be placed is zoned RE-10, *Verizon's* application should be denied.

**Point III**

*Verizon's Application Must Be Denied Because it Does Not Comply with El Dorado County General Plan.*

According to the EDCGP, the El Dorado County General Plan "provides for growth in an environmentally balanced manner, maintains the rural character and quality of the living environment, providing adequate infrastructure while conserving agricultural lands, forest and woodlands, and other natural resources." *See* EDCGP p.1. In the General Plan's Statement of Vision, it also provides that one of the aims of the General Plan is to "maintain and protect the County's natural beauty and environmental quality, vegetation, air and water quality, natural landscape features, cultural resource values, and maintain the rural character and lifestyle while ensuring the economic viability critical to promoting and sustaining community identity." *See* EDCGP p. 3. The intent of the General Plan is to:

1. foster a rural quality of life;
2. sustain a quality environment;
3. develop a strong diversified, sustainable economy;
4. plan land use patterns which will determine the level of public services appropriate to the character, economy, and environment of each region;  
and
5. accommodate the County's fair share of the regional growth projections



while encouraging those activities that comprise the basis of the County's customs, culture, and economic stability.

EDCGP p. 6.

Construction of the proposed cell tower would be in direct violation of the General Plan. The construction of a nine (9) story tall cell tower in the heart of a rural community in close proximity to Lake Arrowbee would serve to destroy the area's natural beauty and destroy the rural quality of life that is the reason that people choose to live in El Dorado County. Not only will property owners in close proximity to the proposed tower suffer from an extreme adverse aesthetic impact and a reduction in real estate values, but it will destroy the rural character of the community. Accordingly, *Verizon's* application must be denied.

#### **Point IV**

*Verizon's Application Should be Denied Because § 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 Would Allow Verizon to Subsequently Increase the Size of the Proposed Cell Tower Without Prior Zoning Approval.*

§ 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 provides "notwithstanding section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve, any eligible request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." *See* 47 U.S.C. § 1455(a). Under FCC regulation, there is a "substantial change" when "it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater." *See* 47 C.F.R. § 1.40001(b)(7).

Under the FCC's reading of § 6409(a) of the Middle Class Tax Relief and Job Creation

Act of 2012, local governments are prohibited from denying modifications to cell towers unless the modification will "substantially change" the physical dimensions of the tower. The FCC defines "substantial change" to include any modification that would increase the height of the tower by more than ten (10%) percent or by more than "the height of one additional antenna with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater."

Typical telecommunication antennas are usually eight (8) feet tall, so this provision would allow an increase in cell tower's height by approximately twenty-eight (28) feet, with this height increase not being able to be challenged by local governments.

Under the FCC's regulation, once this proposed ninety (90) foot cell tower is put in place, *Verizon* at any time could increase the height of the tower by up to approximately twenty-eight (28) feet, and there would be no way for El Dorado County to prevent such an occurrence.

Even more alarming is the fact that *Verizon* is not prevented from making even further "modifications." Once *Verizon* has made its first modification, it can subsequently further modify the cell tower by increasing its height by approximately twenty-eight (28) feet or by ten (10%) of the towers present height, whichever is greater. In this way, what was supposed to be a ninety (90) foot cell tower, after various "modifications," can conceivably become potentially a two-hundred (200) foot tower.

Because of the potential for abuse by *Verizon* once the tower is installed, *Verizon's* application should be denied.

#### **Point V**

#### **Verizon's Application Should be Denied Because its Proposed Installation Does Not Provide a Sufficient Fallzone or Safezone**

Although El Dorado County has not enacted a specific setback/fallzone requirement for

cell towers, local governments across the entire United States, have enacted a setback/fallzone requirements for cell towers for the purpose of protecting their citizenry, and the public at large, against the potential adverse impacts which irresponsibly placed towers present. There are three (3) physical dangers that have induced local governments to adopt specific setback requirements for cell towers, and which serve as the reason why the required setback distances for cell towers are invariable tied directly to the height of respective towers.

These dangers are ice fall, debris fall and structural failures.

Since the entire compound described by *Verizon* is to be only 46.5' x 22' with the cell tower measuring ninety (90) feet, it is factually impossible to afford a sufficient safezone or fallzone to afford safety to the public.

Despite the fact that the cell tower will be located on a larger property, *Verizon* will only be leasing a 46.5' x 22' parcel of that property with an access easement to get to and from the compound. *Verizon* only has the power to exclude people from the leased 46.5' x 22' parcel and cannot prevent people from going elsewhere on the larger property and protect them. Even if the nine (9) story tall cell tower is placed in the very center of the 46.5' by 22' compound, the ninety (90) foot cell tower would only be set back approximately only 11 feet from two sides of the parcel and 23.25 feet from the other two sides of the parcel. The location of this tower on such a small parcel of leased land makes it impossible for *Verizon* to afford safety to the public.

Additionally, if the height of the tower is further increased in accordance with § 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, the small leased parcel would fail to provide an adequate safe setback.

Since *Verizon* is entirely without power to exclude persons from entering the area outside of its small leased parcel, *Verizon's* proposed compound offers absolutely no protection to anyone who could be standing or passing outside of *Verizon's* compound but within the fallzone

of the tower, or the ice fall or debris fall zones of the tower.

### Ice Fall

Although rare in El Dorado County, ice fall is a natural, but well-known danger associated with communications towers, and the very real risk that can come during the winter-early spring, when ice, which has formed upon an installation, begins to melt, comes loose, and hurdles to the ground. It would fall, in this case, from a height as high as nine (9) stories, and could reach speeds of 67-70 mph by the time it hit the ground.<sup>6</sup>

As logic would dictate, if chunks of ice fell from a height of nine (9) stories, they could seriously injure or kill anyone struck by them. Worst of all, chunks of ice falling from cell towers generate no noise, and as such, any person under it would receive no warning before being struck by same.

### Structural Failures

Equally well-documented are the multiple dangers of structural failures of all types of cell towers, from lattice structures to monopoles, wherein a component of an installation fails, causing an element or part of the structure to hurdle to the ground, or in some cases, the entire tower to collapse<sup>7</sup> or to burst into flames and fall over.<sup>8</sup>

Some of the most common elements and areas of failure which result in the collapse of

---

<sup>6</sup> To see dramatic video footage of chunks of ice falling from a communications tower causing severe damage to automobiles in a parking lot below, go to [www.youtube.com/watch?v=pfBp2QYOIbc](http://www.youtube.com/watch?v=pfBp2QYOIbc) or [www.youtube.com/watch?v=YWqiSHRwmk8](http://www.youtube.com/watch?v=YWqiSHRwmk8) or search on YouTube for "ice falls from tower". While such video depicts ice falling from a tower higher than that being proposed, experts have calculated that ice falling from a 150-foot tower would reach the speed of 67-70 mph by the time it hit the ground (See e.g. Exhibit "J" - a true copy of a physicist's report dated April 16, 2013 which calculates the speed of ice falling from a 150-foot cell tower).

<sup>7</sup> To see dramatic images of a 165-foot tower having collapsed at a firehouse, crushing the Fire Chief's vehicle, go to [www.firehouse.com/news/10530195/oswego-new-york-cellular-tower-crushes-chiefs-vehicle](http://www.firehouse.com/news/10530195/oswego-new-york-cellular-tower-crushes-chiefs-vehicle), or go to Google and search for "Oswego cell tower collapse."

<sup>8</sup> To see videos of modern towers bursting into flames and/or burning to the ground, go to <http://www.youtube.com/watch?v=0cT5cXuyiYY&NR=1> or <http://www.youtube.com/watch?v=yNKVWrazg>, or simply go to *Google*, and search for "cell tower burns."

cell towers are baseplates,<sup>9</sup> flanges, joints, bolts and guy wires.<sup>10</sup>

### Debris Fall

Finally, there is the danger of falling debris, and more specifically, items dropped or caused to fall during routine maintenance activities that must be performed upon such towers on a regular basis.<sup>11</sup>

To afford adequate protections against these very real dangers, local governments have imposed setback requirements to afford sufficiently sized buffer/safety areas to ensure the safety of both their citizens and the public at large.

These buffer or safety zones consist of an area surrounding a tower which is restricted from public or personal access, and which is large enough to ensure that if a tower were to fail or collapse, or ice were to hurdle downward from the top of it, nobody would be close enough to be injured or killed by same.

A sample of a typical local government zoning regulation which actually describes such concerns is the Town of Huntington, NY Code Section §113 which provides as follows:

“It shall be demonstrated to the satisfaction of the Town Board that the proposed facility is set back adequately to prevent damage or injury resulting from ice fall or debris resulting from the failure of a wireless telecommunications facility, or any part thereof and to avoid and minimize all other impacts upon adjoining properties.”

Huntington Town Code §113-58.1(F)

As a rule of thumb, to ensure that a buffer/safety zone of sufficient size is maintained,

---

<sup>9</sup> To see images of monopole baseplate failures, go to <http://residentsact.blogspot.com/2007/11/just-how-safe-are-monopole-cell-towers.html>

<sup>10</sup> To see multiple images of telecommunications towers which have collapsed, go to google, type in a search for “radio tower collapse”, and then choose “images” from the search results.

<sup>11</sup> Annexed hereto as Exhibit “K” is a page from a study completed by a consultant hired by the City of Brookfield Wisconsin, - which depicts a lump hammer which had been dropped from a cell tower during routine maintenance, and crashed through the roof of a nearby structure.

knowledgeable local governments across the Country have enacted ordinances that generally require minimum setbacks ranging from 100% to 200% of the height of a respective communications tower.

Although El Dorado County does not have a specific setback requirement, the Planning Commission should determine that the required minimum setback in this case should, on all sides, should be at least equal to 100% of the height of the respective tower. Since *Verizon's* proposed tower does not meet such setback requirements, nor afford a sufficiently safe fallzone around its proposed tower to restrict access to the zones for structural failures, ice fall or debris fall, its application should be denied.

#### **Point VI**

##### **Verizon's Application Must Be Denied Because the Applicant's Photo Submission is Defective and Should be Disregarded Entirely**

In connection with its application, *Verizon* has provided various photographs and/or photo simulations in an effort to persuade the County that the adverse aesthetic impact, which its proposed compound and tower would inflict upon the community, would not be substantial.

Such simulations and presentations are inherently defective, and should be wholly disregarded by the County, because the applicant has conveniently abstained from providing images taken from the perspective of the nearby homes, or any location which would reflect the most significant adverse aesthetic impacts.

As is likely known to the applicant, photo simulations of proposed cell towers are inherently defective, and serve no legitimate purpose from a zoning perspective, when they do not include recorded images taken from the properties of nearby residential homes which stand to suffer the most significant adverse aesthetic impact if the proposed installation is constructed.

In *Omnipoint Communications Inc. v. The City of White Plains*, 430 F2d 529 (2nd Cir.

2005), a federal court explicitly ruled that where, as here, a proponent of a cell tower presents a visual impact study wherein they “omit” from the study any images or analysis of the perspectives of homeowners whose homes are in close proximity to the proposed installation, the study is inherently defective, and should be properly disregarded by the respective government entity that received it.

As was explicitly stated by the federal court, “the Board was free to discount Omnipoint’s study because it was conducted in a defective manner. . . because the study was conducted without notice to the Board or the community, the observation points were limited to locations accessible to the public roads, and no observations were made from the residents’ backyards much less from their second story windows” *Id.*

Not surprisingly, the images presented by *Verizon* do not include any images taken from the properties of the nearby homeowners who have provided detailed descriptions of the adverse aesthetic impacts their respective homes will sustain if the proposed tower is constructed. (*See* Exhibit "D" letters).

As such, in accord with the federal court’s holding in *Omnipoint*, the applicant’s photo submission must be disregarded in its entirety.

#### **Point VII**

##### **To Comply With the TCA, *Verizon's* Application Should Be Denied in a Written Decision Which Cites the Evidence Provided Herewith**

The Telecommunications Act of 1996 requires that any decision denying an application to install a cell tower: (a) be made in writing, and (b) be made based upon substantial evidence, which is discussed in the written decision. *See* 47 U.S.C.A. §332(c)(7)(B)(iii).

##### **The Written Decision Requirement**

To satisfy the requirement that the decision be in writing, a local government must issue a written denial which is separate from the written record of the proceeding, and the denial must contain a sufficient explanation of the reasons for the denial to allow a reviewing Court to

evaluate the evidence in the record supporting those reasons. *See e.g. MetroPCS v. City and County of San Francisco*, 400 F.3d 715(2005).

The Substantial Evidence Requirement

To satisfy the requirement that the decision be based upon substantial evidence, the decision must be based upon such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "Substantial evidence" means "less than a preponderance, but more than a scintilla. Review under this standard is essentially deferential, such that Courts may neither engage in their own fact finding nor supplant a local zoning board's reasonable determinations. *See e.g. American Towers, Inc. v. Wilson County*, Slip Copy 59 Communications Reg. P & F 878 (U.S.D.C. M.D. Tennessee January 2, 2014)[3:10-CV-1196]

To ensure that the Board's decision cannot be challenged under the Telecommunications Act of 1996, it is respectfully requested that the Board deny *Verizon's* application in a separate written decision, wherein the Board cites the evidence based upon which it made its determination.

**CONCLUSION**

In view of the forgoing, it is respectfully submitted that *Verizon's* application should be denied in its entirety.

Respectfully Submitted,

  
Linda Stevens

  
Janet Barbieri



**EXHIBIT A**



## COMMUNITY DEVELOPMENT AGENCY DEVELOPMENT SERVICES DIVISION

<http://www.edcgov.us/DevServices/>

### PLACERVILLE OFFICE:

2850 Fairlane Court, Placerville, CA 95667

#### BUILDING

(530) 621-5315 / (530) 622-1708 Fax

[biddept@edcgov.us](mailto:biddept@edcgov.us)

#### PLANNING

(530) 621-5355 / (530) 642-0508 Fax

[planning@edcgov.us](mailto:planning@edcgov.us)

### LAKE TAHOE OFFICE:

3368 Lake Tahoe Blvd., Suite 302

South Lake Tahoe, CA 96150

(530) 573-3330

(530) 542-9082 Fax

[tahoebuild@edcgov.us](mailto:tahoebuild@edcgov.us)

### REVISED NOTICE OF PUBLIC HEARING

The County of El Dorado Planning Commission will hold a public hearing in the Building C Hearing Room, 2850 Fairlane Court, Placerville, CA 95667 on February 11 25, 2016, at 8:30 a.m., to consider **Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopine** submitted by Verizon Wireless (Agent: Epic Wireless-Mark Lobaugh) to allow the construction of a new 90-foot tall monopine tower, six antennas with nine remote radio heads and two surge protectors on three sectors mounted at 81-feet, outdoor equipment cabinets on a 33- by 20-foot steel platform, a 30kw standby diesel generator with a 132-gallon tank, and related ground equipment all within a 46.5-foot by 22-foot lease area. Access to the site would be provided by a proposed 12-foot wide non-exclusive Verizon Wireless access easement containing a gravel driveway that would extend approximately 100-feet past the existing residence. The property, identified by Assessor's Parcel Number 105-140-06, consisting of 5.02 acres, is located on the north side of Birdseye View Lane, approximately 2.18 miles northwest of the intersection with Arrowbee Drive and Luneman Road, in the Placerville area, Supervisorial District 4. [County Planner: Aaron Mount] (Negative Declaration prepared)\*

Staff Reports are available two weeks prior at <https://eldorado.legistar.com/Calendar.aspx>

All persons interested are invited to attend and be heard or to write their comments to the Planning Commission. If you challenge the application in court, you may be limited to raising only those items you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Commission at, or prior to, the public hearing. Any written correspondence should be directed to the County of El Dorado Community Development Agency, Development Services Division-Planning Services, 2850 Fairlane Court, Placerville, CA 95667 or via e-mail: [planning@edcgov.us](mailto:planning@edcgov.us).

\*This is a notice of intent to adopt the negative declaration or mitigated negative declaration that has been prepared for this project and which may be reviewed and/or obtained in the County of El Dorado Community Development Agency, Development Services Division-Planning Services, 2850 Fairlane Court, Placerville, CA 95667, during normal business hours or online at <http://edcapps.edcgov.us/Planning/ProjectInquiry.asp>. A negative declaration or mitigated negative declaration is a document filed to satisfy CEQA (California Environmental Quality Act). This document states that there are no significant environmental effects resulting from the project, or that conditions have been proposed which would mitigate or reduce potential negative effects to an insignificant level. The public review period for the negative declaration or mitigated negative declaration set forth in CEQA for this project is thirty days, beginning January 12, 2016, and ending February 10, 2016.

To ensure delivery to the Commission prior to the hearing, written information from the public is encouraged to be submitted by Thursday the week prior to the meeting. Planning Services cannot guarantee that any FAX or mail received the day of the Commission meeting will be delivered to the Commission prior to any action.

COUNTY OF EL DORADO PLANNING COMMISSION

ROGER TROUT, Executive Secretary

Date: February 3, 2016

FILE # 515-0004

**EL DORADO COUNTY PLANNING DEPARTMENT**

**APPLICATION FOR Special Use Permit**

ASSESSOR'S PARCEL NO.(s) 105-140-06-10

PROJECT NAME/REQUEST: (Describe proposed use) Arrowbee Lake Verizon Wireless Cellular Tower Project

IF SUBDIVISION/PARCEL MAP: Create \_\_\_\_\_ lots, ranging in size from \_\_\_\_\_ to \_\_\_\_\_ acre(s) / SF

IF ZONE CHANGE: From \_\_\_\_\_ to \_\_\_\_\_ IF GENERAL PLAN AMENDMENT: From \_\_\_\_\_ to \_\_\_\_\_

IF TIME EXTENSION, REVISION, CORRECTION: Original approval date \_\_\_\_\_ Expiration date \_\_\_\_\_

APPLICANT/AGENT Verizon Wireless c/o Epic Wireless c/o Mark Lobaugh

Mailing Address 8700 Auburn Folsom Road

Phone ( 916 ) 203-4067 FAX ( 916 ) 781-5927

PROPERTY OWNER Eric and Elizabeth Johanson

Mailing Address 4131 Birdseye View Ln, Placerville, CA 95667

Phone ( 530 ) 626-6874 FAX ( \_\_\_\_\_ )

LIST ADDITIONAL PROPERTY OWNERS ON SEPARATE SHEET IF APPLICABLE

ENGINEER/ARCHITECT Borges Architectural Group, INC

Mailing Address 1478 Stone Point Dr, Roseville, CA 95661

Phone ( 916 ) 782-7200 FAX ( \_\_\_\_\_ )

LOCATION: The property is located on the North side of Birdseye View Ln  
N/E/W/S street or road

2.18 feet/miles North West of the intersection with Arrowbee Dr and Lotus Rd  
N/E/W/S major street or road

in the Placerville area. PROPERTY SIZE 5.02 acres  
acres/square footage

x Eric W. Johanson Date 2-11-15  
signature of property owner or authorized agent

**FOR OFFICE USE ONLY**

Date 2/12/15 Fee \$ 4,900.00 Receipt # 29238 Rec'd by MOVANT Census \_\_\_\_\_  
Zoning RF-10 GPD LDN Supervisor Dist 4 Sec/Twn/Rng 2311N/9E

ACTION BY:  PLANNING COMMISSION  
 ZONING ADMINISTRATOR  
 PLANNING DIRECTOR

ACTION BY BOARD OF SUPERVISORS  
Hearing Date \_\_\_\_\_

Hearing Date \_\_\_\_\_

Approved  Denied (findings and/or conditions attached)

Approved  Denied (findings and/or conditions attached)

APPEAL:  Approved  Denied

Executive Secretary \_\_\_\_\_

Executive Secretary \_\_\_\_\_

Revised 07/02  
**S 15-0004**

## PROJECT SUPPORT STATEMENT

DEVELOPMENT APPLICATION FOR VERIZON SITE "ARROWBEE LAKE" 16 FEB 19 PM 4:00

APN 105-140-06-10

RECEIVED  
PLANNING DEPARTMENT

4131 Birdseye View Ln, PLACERVILLE, CA. 95667

### INTRODUCTION

Verizon Wireless is seeking to improve communications service in the El Dorado County area near Lotus Road. Verizon would like to increase coverage and capacity in the area by constructing a new telecommunications facility in to improve service for both current and potential customers. Additionally, this network development will increase public safety within these areas and bring wireless service to areas that currently have poor capacity service.

This tower will help alleviate an area of poor coverage and inadequate capacity within this service area, which causes reoccurring lost calls and ineffective service. This site will relieve inadequate capacity in the area due to high cell phone and broadband usage in the greater Arrowbee Lake area. The proposed location of the tower is set within an unutilized portion of this parcel and will be designed to comply with all County of El Dorado's wireless design guidelines. The proposed Verizon Communications facility will be located within a 33', 4"x 20"x20' fenced compound including: outdoor equipment cabinets, a 30kw Diesel generator and a 90' stealth monopine, and is designed to blend in with the existing trees nearby. This tower will accommodate (3) sectors with (2) antennas per sector, (3) remote radio units (RRU's) per sector. This tower has been designed to accommodate future collocation by other carriers. This site is constructed atop a raised steel platform in order to minimize the amount of earth work needed to achieve a flat site. As such, very little soil will need to be graded for this site. The proposed site is well screened from public view by several large mature trees and has been selected due to its location on a hill top, adequately positioned to provide coverage in the intended service area.

The parcel selected for this communication is owned by Eric and Elizabeth Johanson and totals 5.02 acres. The location for this project is situated approximately 1.77 miles from Lotus Road.

This unmanned facility will provide service to area travelers, residents and businesses 24 hours a day, 7 days a week. This site will also serve as a back up to the existing landline service in the area and will provide improved mobile communications, essential to modern day commerce and recreation.

### ALTERNATIVE LOCATIONS REVIEWED BUT NOT SELECTED

1310 Large Oak Drive	Landlord not interested in pursuing a lease with Verizon
4590 Stoney Ridge Rd.	Rejected by Verizon, in adequate coverage capability.
4540 Stoney Ridge Rd.	Rejected by Verizon, in adequate coverage capability.
4541 Burnt Oak Dr.	Rejected by Verizon, in adequate coverage capability.
1310 Large Oak Dr.	Landlord not interested in pursuing a lease with Verizon
4101 Birds Eye Court	Landlord not interested in pursuing a lease with Verizon

### SAFETY BENEFITS OF IMPROVED WIRELESS SERVICE

Mobile phone use has become an extremely important system for public safety. Along roads and highways without public call boxes, mobile phones are often the only means for emergency roadside communication. Motorists with disabled vehicles (or worse) can use their phone to call in and request appropriate assistance. With good cellular coverage along important roadways, emergency response is just a phone call away. Furthermore, as a back up system to traditional landline phone service, mobile phones have proven to be extremely important during natural disasters and other catastrophes.

Project Support Statement - Verizon Arrowbee Lake Site

Verizon has taken the responsibility for back-up service very seriously. As such, Verizon has incurred increased expense to install a standby diesel generator at this facility to insure quality communication for the surrounding community regardless of any disaster or catastrophe.

#### **CONVENIENCE BENEFITS OF IMPROVED WIRELESS SERVICE**

Modern day life has become increasingly dependent on instant communications. Whether it is a parent calling their child, spouse calling a spouse, or general contractor ordering materials to the jobsite, wireless phone service is no longer just a convenience. It has become a way of life and a way of business.

#### **COMPLIANCE WITH COUNTY DEVELOPMENT STANDARDS**

This project has been carefully designed to comply with all applicable standards.

#### **COMPLIANCE WITH FCC STANDARDS**

This project will not interfere with any TV, radio, telephone, satellite, or any other signals. Any interference would be against the Federal Law and would be a violation Verizon Wireless' FCC License. In addition, this project will conform to all FCC standards.

#### **TECHNOLOGY AND CONSUMER SERVICES THE CARRIER WILL PROVIDE ITS CUSTOMERS**

Verizon offers its customers multiple services such as, voice calls, text messaging, mobile email, picture/video messaging, mobile web, navigation, broadband access. Wireless service enhances public safety and emergency communications in the community. In rural areas such as the subject location, cellular phone service can cover much larger geographic areas than traditional landline phone service.

#### **FUTURE COLLOCATION OPPORTUNITIES**

The proposed site has been designed to allow for future co-location opportunities with other carriers. The land lease provides sufficient space for additional service providers and the tower and its foundation are designed for future equipment. This tower will eliminate the need for multiple towers within the same general vicinity as it has been designed to accommodate carriers should they come forward. Additional ground space would need to be leased from the landlord.

#### **LIGHTING**

Unless tower lighting is required by the FAA the only lighting on the facility will be a shielded motion sensor light by the door on the equipment shelter for servicing the equipment.

#### **NOISE**

The standby generator will be operated for approximately 15 minutes per week for maintenance purposes, and during power outages and disasters.

#### **HAZARDOUS MATERIAL**

A Hazardous Material Business Plan will also be submitted upon project completion, and stored on site after construction

#### **ENVIRONMENTAL SETTING**

The site is set within a parcel that is zoned LI and is consistent with application design standards in the area and environment.

## **MAINTENANCE AND STANDBY GENERATOR TESTING**

Verizon installs a standby diesel generator and batteries at many of its cell sites. The generator and batteries serve a vital role in Verizon emergency and disaster preparedness plan. In the event of a power outage, Verizon communications equipment will first transition over to the back-up batteries. The batteries can run the site for a few hours depending upon the demand placed upon the equipment. Should the power outage extend beyond the capacity of the batteries, the back-up generator will automatically start and continue to run the site. This two state back-up plan is an extremely important component of Verizon communications sites. Back-up batteries and generators allow Verizon communications sites to continue providing valuable communications services in the event of a power outage, natural disaster or other emergency.

A standby generator will be installed at the site to ensure quality and consistent coverage in the event of a power outage or disaster. This generator will be run for approximately 15 minutes per week for maintenance purposes, and during power outages and disasters.

A technician will visit the site approximately twice a month to check the facility and perform any necessary maintenance.

## **CONSTRUCTION SCHEDULE**

The construction of the facility will be in compliance with all local rules and regulations. The typical duration is two months. The crew size will range from two to ten individuals.

Order No.  
Escrow No. 898293T  
Loan No.

043918

15 FEB 12 PM 4:47

WHEN RECORDED MAIL TO:

ERIC W. JOHANSON  
ELIZABETH A. JOHANSON  
2151 Old Oakland Road, Space 527  
San Jose, CA 95131

EL DORADO COUNTY-SALE  
RECORD REQUESTED BY  
JIMMY GARR  
COUNTY RECORDER

RECEIVED  
PLANNING DEPARTMENT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

FOR  
FILE

DOCUMENTARY WALDOVEN TAX \$ 45.55  
Computed on the sale. Location or value of property necessary OR  
Computed on the consideration or value less Debt or encumbrances  
payable at time of sale.  
First American Title Insurance Co.  
Sellers of Insurance or Agent authorized on - Page 16-10

APN: 105-148-06

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
BRYCE L. CALAHAN and DONNA G. CALAHAN, husband and wife

herby GRANTED to  
ERIC W. JOHANSON and ELIZABETH A. JOHANSON, husband and wife as Joint Tenants

the real property in the City of unincorporated area, State of California, located in  
County of El Dorado

A portion of the Northwest quarter of Section 23, Township 11 North, Range  
09 East, S.D.S.M., more particularly described as follows:

Parcel 2, as shown on that certain Parcel Map, filed in the office of the  
County Recorder, County of El Dorado, State of California, on May 27, 1980,  
in Book 26 of Parcel Maps, at page 135.

Dated August 3, 1989

STATE OF CALIFORNIA  
COUNTY OF El Dorado  
On August 5, 1989

before me, the undersigned, a Notary Public in and for said State, personally appeared Donna G. Calahan and Bryce L. Calahan

personally known to me or on the basis of satisfactory evidence to be the persons whose names are subscribed to the  
above instrument and acknowledged to me that they executed the same.

Witness my hand and official seal.  
Wanda McCallum

Donna G. Calahan  
DONNA G. CALAHAN



END DOCUMENT  
MAIL TAX STATEMENTS AS DIRECTED ABOVE

898293T PAGE 17

S 15-0004

FILE # \_\_\_\_\_  
DATE FILED \_\_\_\_\_

EL DORADO COUNTY PLANNING DEPARTMENT  
ENVIRONMENTAL QUESTIONNAIRE

15 FEB 12 PM 4:47

RECEIVED  
PLANNING DEPARTMENT

Project Title Arrowbee Lake Verizon Wireless New Build  
Lead Agency El Dorado County Planning Department  
Name of Owner Eric and Elizabeth Johanson Telephone ( 530 ) 626-6874  
Address 4131 Birdseye View Ln, Placerville, CA 95667  
Name of Applicant Verizon Wireless c/o Epic Wireless c/o Mark Lobaugh Telephone ( 916 ) 203 - 4067  
Address 8700 Auburn Folsom Road Suite 400, Granite Bay, CA 95746  
Project Location 4131 Birdseye View Ln, Placerville, CA 95667  
Assessor's Parcel Number(s) 105-140-06-10  
Acreage 5.02 Zoning LI

**Please answer all of the following questions as completely as possible. Subdivisions and other major projects will require a Technical Supplement to be filed together with this form.**

1. Type of project and description: Verizon Wireless proposes to construct a 90' tall Stealth monopine tower which will include three sectors, with two antennas per sector and 3 RRU's per sector. There will also be an Equipment Shelter and 30kVa diesel generator.
2. What is the number of units/parcels proposed? 1

**GEOLOGY AND SOILS**

3. Identify the percentage of land in the following slope categories:  
xx 0 to 10%    \_\_\_\_\_ 11 to 15%    \_\_\_\_\_ 16 to 20%    \_\_\_\_\_ 21 to 29%    \_\_\_\_\_ over 30%
4. Have you observed any building or soil settlement, landslides, rock falls or avalanches on this property or in the nearby surrounding area? No
5. Could the project affect any existing agriculture uses or result in the loss of agricultural land?  
No

**DRAINAGE AND HYDROLOGY**

6. Is the project located within the flood plain of any stream or river? No  
If so, which one? \_\_\_\_\_
7. What is the distance to the nearest body of water, river, stream or year-round drainage channel?  
0.13 miles    Name of the water body? Arrowbee Lake
8. Will the project result in the direct or indirect discharge of silt or any other particles in noticeable amount into any lakes, rivers or streams? No

**S 15-0004**



9. Will the project result in the physical alteration of a natural body of water or drainage way?  
If so, in what way? none
10. Does the project area contain any wet meadows, marshes or other perennially wet areas?  
No

**VEGETATION AND WILDLIFE**

11. What is the predominant vegetative cover on the site (trees, brush, grass, etc.)? Estimate percentage of each: Grass
12. How many trees of 6-inch diameter will be removed when this project is implemented?  
0

**FIRE PROTECTION**

13. In what structural fire protection district (if any) is the project located? Pilot Hill
14. What is the nearest emergency source of water for fire protection purposes (hydrant, pond, etc.)? 0.13 miles
15. What is the distance to the nearest fire station? 4.28 miles
16. Will the project create any dead-end roads greater than 500 feet in length? No
17. Will the project involve the burning of any material including brush, trees and construction materials? No

**NOISE QUALITY**

18. Is the project near an industrial area, freeway, major highway or airport? No  
If so, how far? \_\_\_\_\_
19. What types of noise would be created by the establishment of this land use, both during and after construction? Generator operates once every month for 15 mins at 36 dB at 23 ft (equivalent to normal conversation at 3 ft.

**AIR QUALITY**

20. Would any noticeable amounts of air pollution, such as smoke, dust or odors, be produced by this project? Minimal, AQMD form to be filed. Equipment is exempt due to low HP engine.

**WATER QUALITY**

21. Is the proposed water source  public or  private,  treated or  untreated?  
Name the system: N/A

22. What is the water use (residential, agricultural, industrial or commercial)? No water use.

**AESTHETICS**

23. Will the project obstruct scenic views from existing residential areas, public lands, public bodies of water or roads? No

**ARCHAEOLOGY/HISTORY**

24. Do you know of any archaeological or historical areas within the boundaries or adjacent to the project? (e.g., Indian burial grounds, gold mines, etc.) None known

**SEWAGE**

25. What is the proposed method of sewage disposal?  septic system  sanitation district  
Name of district: NA

26. Would the project require a change in sewage disposal methods from those currently used in the vicinity? NA

**TRANSPORTATION**

27. Will the project create any traffic problems or change any existing roads, highways or existing traffic patterns? No

28. Will the project reduce or restrict access to public lands, parks or any public facilities?  
No

**GROWTH-INDUCING IMPACTS**

29. Will the project result in the introduction of activities not currently found within the community?  
No

30. Would the project serve to encourage development of presently undeveloped areas, or increases in development intensity of already developed areas (include the introduction of new or expanded public utilities, new industry, commercial facilities or recreation activities)?  
No

31. Will the project require the extension of existing public utility lines? No  
If so, identify and give distances: \_\_\_\_\_

**GENERAL**

32. Does the project involve lands currently protected under the Williamson Act or an Open Space Agreement? No
33. Will the project involve the application, use or disposal of potentially hazardous materials, including pesticides, herbicides, other toxic substances or radioactive material? Diesel fuel for generator.
34. Will the proposed project result in the removal of a natural resource for commercial purposes (including rock, sand, gravel, trees, minerals or top soil)? No
35. Could the project create new, or aggravate existing health problems (including, but not limited to, flies, mosquitos, rodents and other disease vectors)? No
36. Will the project displace any community residents? No

**DISCUSS ANY YES ANSWERS TO THE PREVIOUS QUESTIONS** (attached additional sheets if necessary)

Diesel generator included, see drawings for specifications.

**MITIGATION MEASURES** (attached additional sheets if necessary)

Proposed mitigation measures for any of the above questions where there will be an adverse impact:

---

---

---

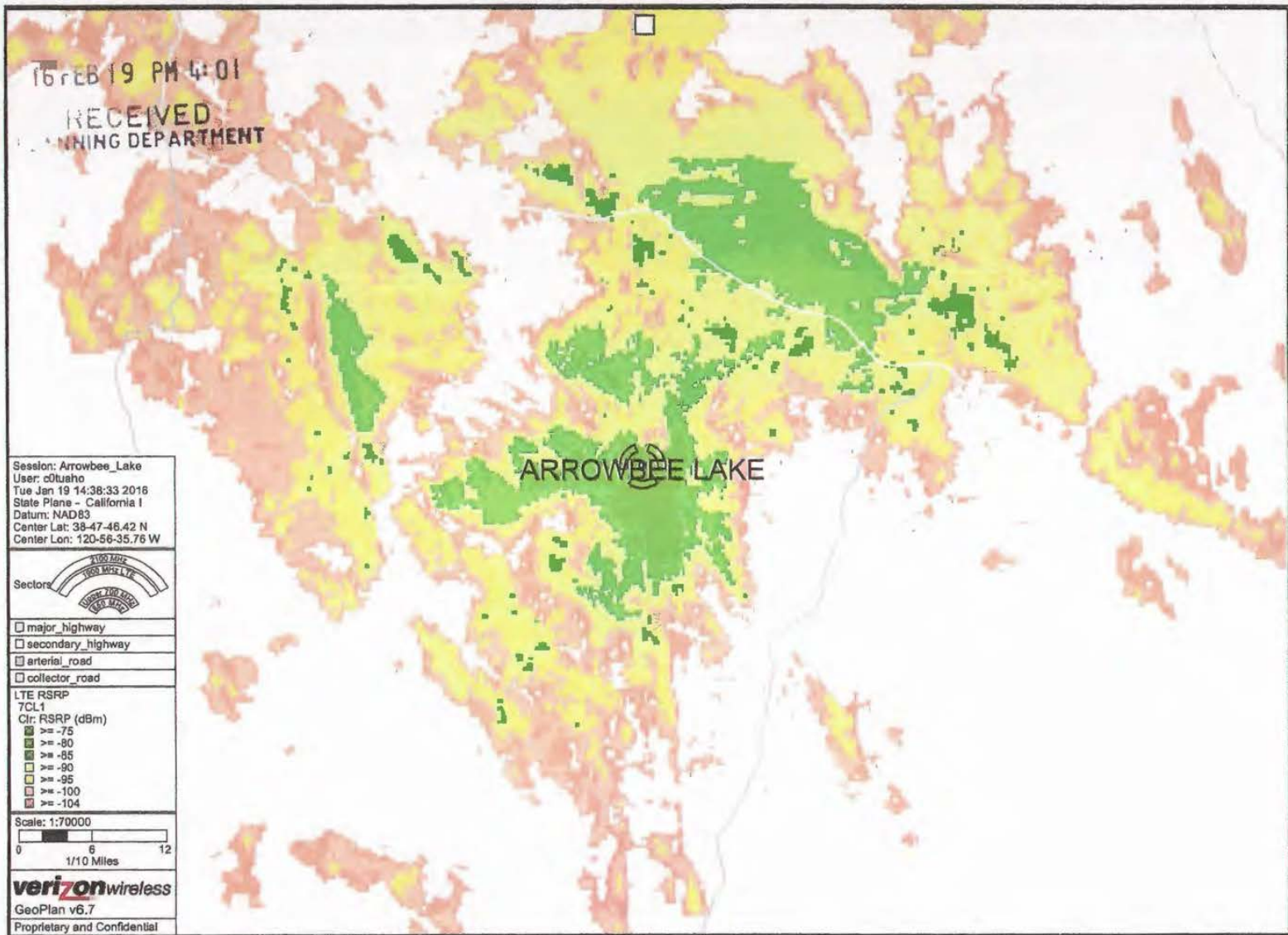
---

---

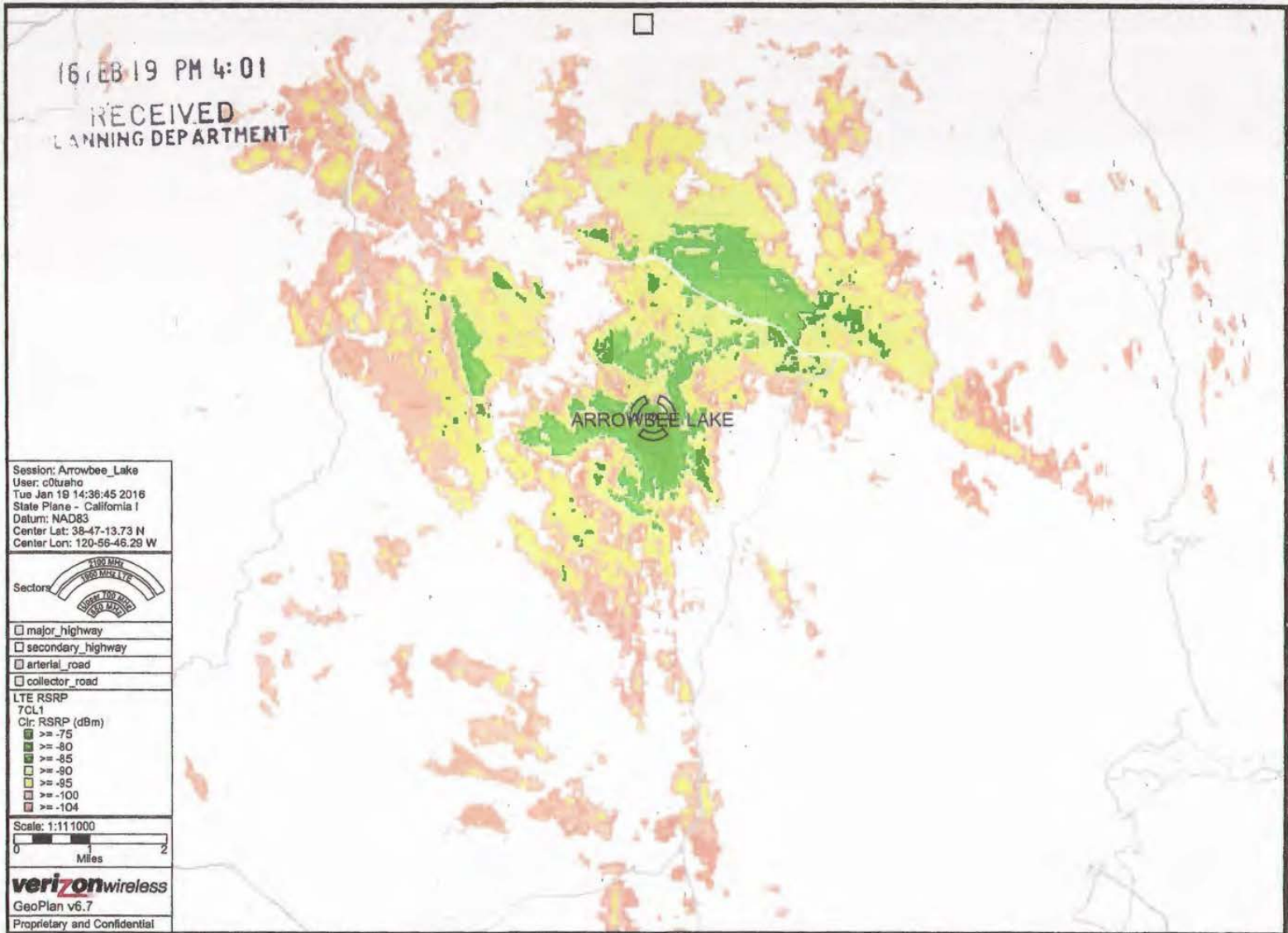
---

Form completed by: \_\_\_\_\_ Date: \_\_\_\_\_ (revised 03/99)

After installation zoom 700R SRP

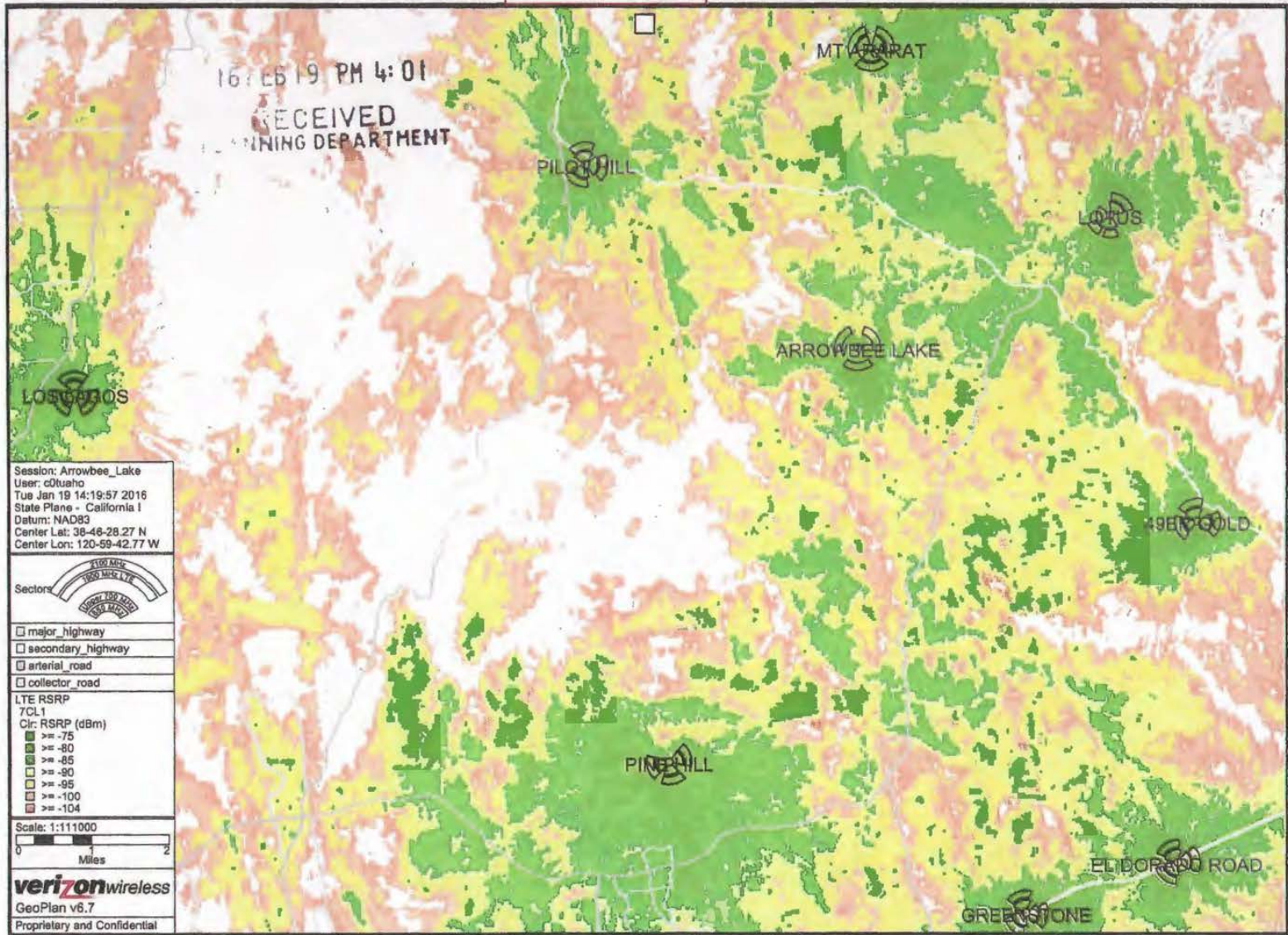


After 700 RSRP site



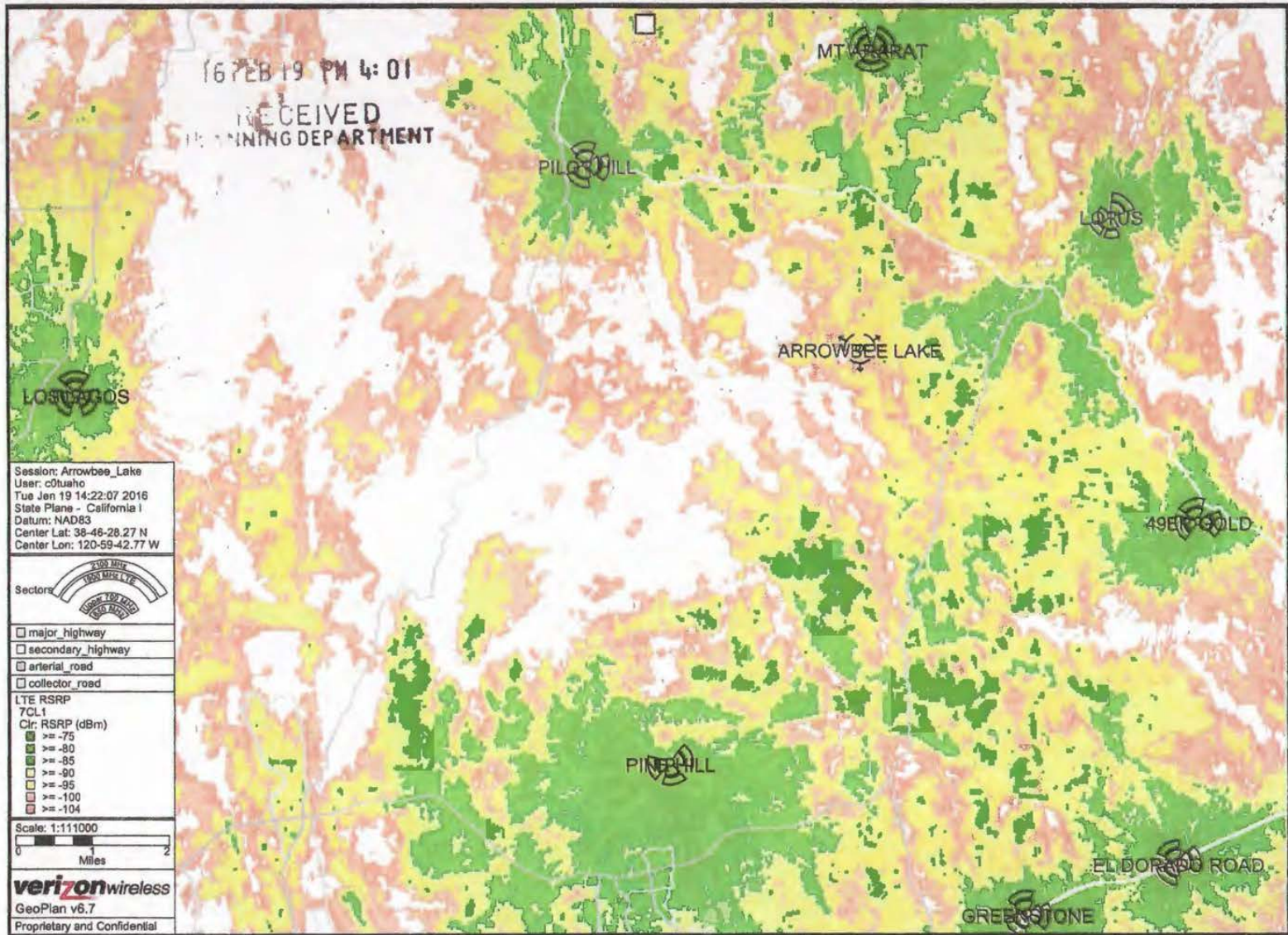


After Installation  
700 RSRP



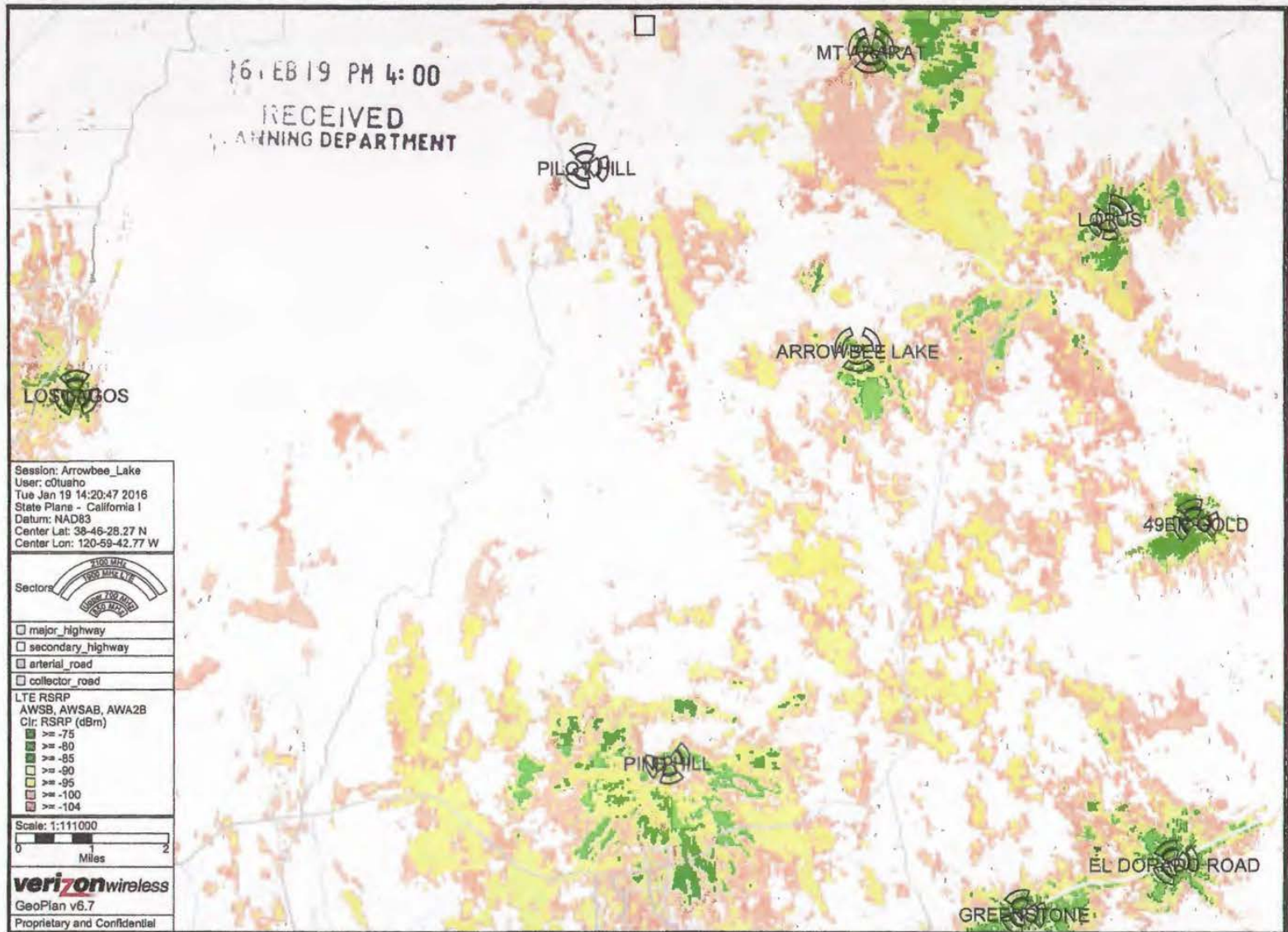


Before Installation 700 RSRP





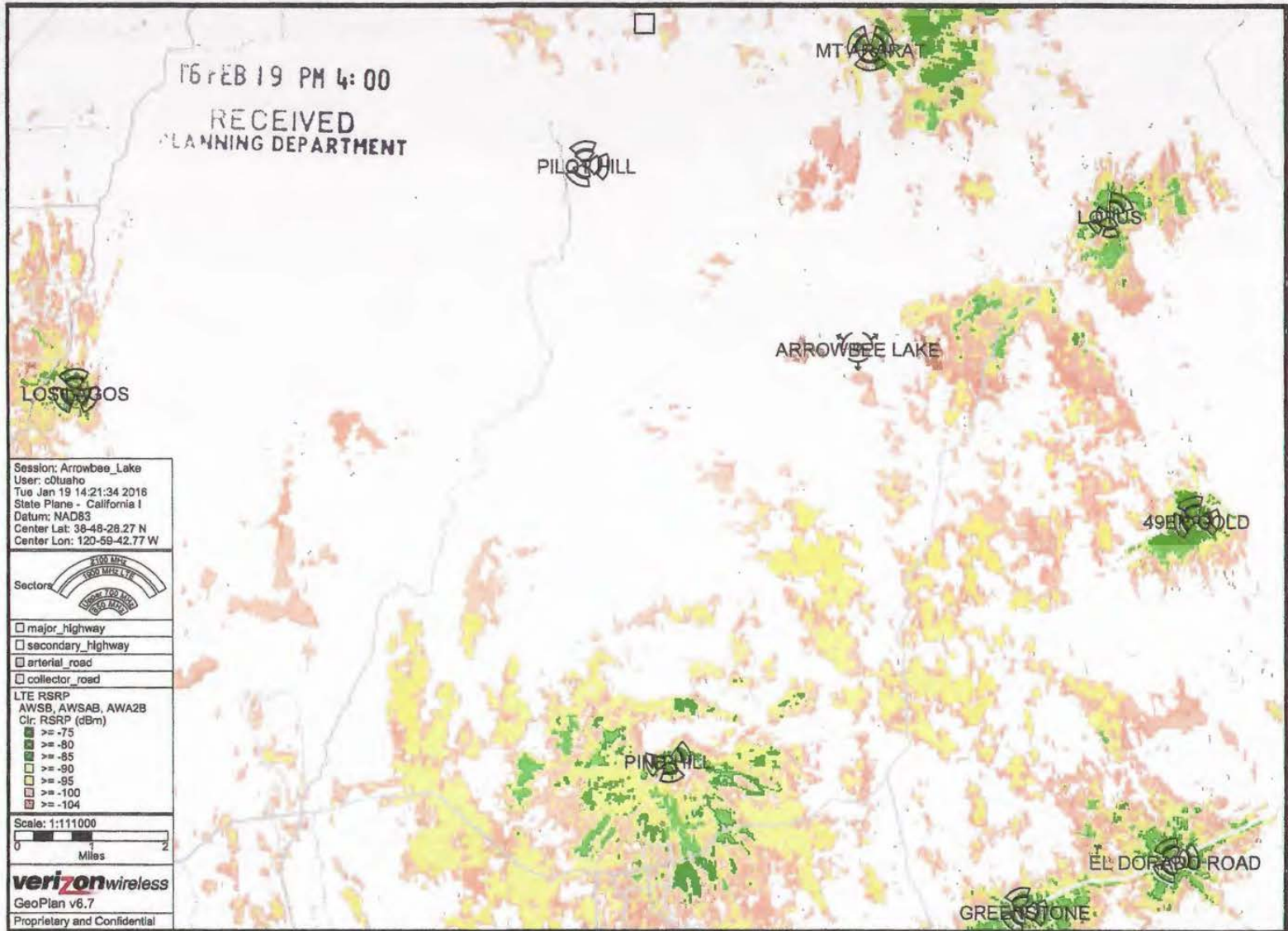
AWS After installation



*see p 2-19-16*



AWS Before installation





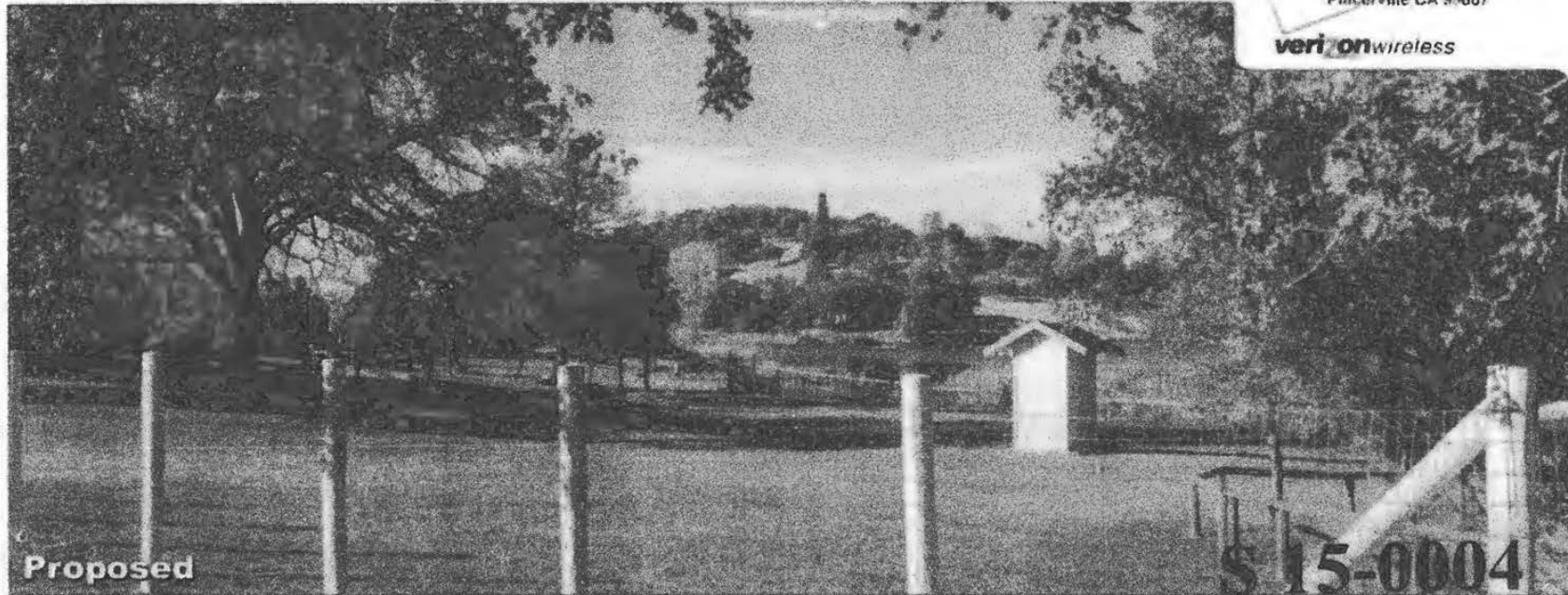
**Existing**

Photosimulation of the view looking northwest from Shoreline Drive approaching Wild Flower Lane.

**Arrowbee Lake**

4131 Birdseye View Lane  
Placerville CA 95667

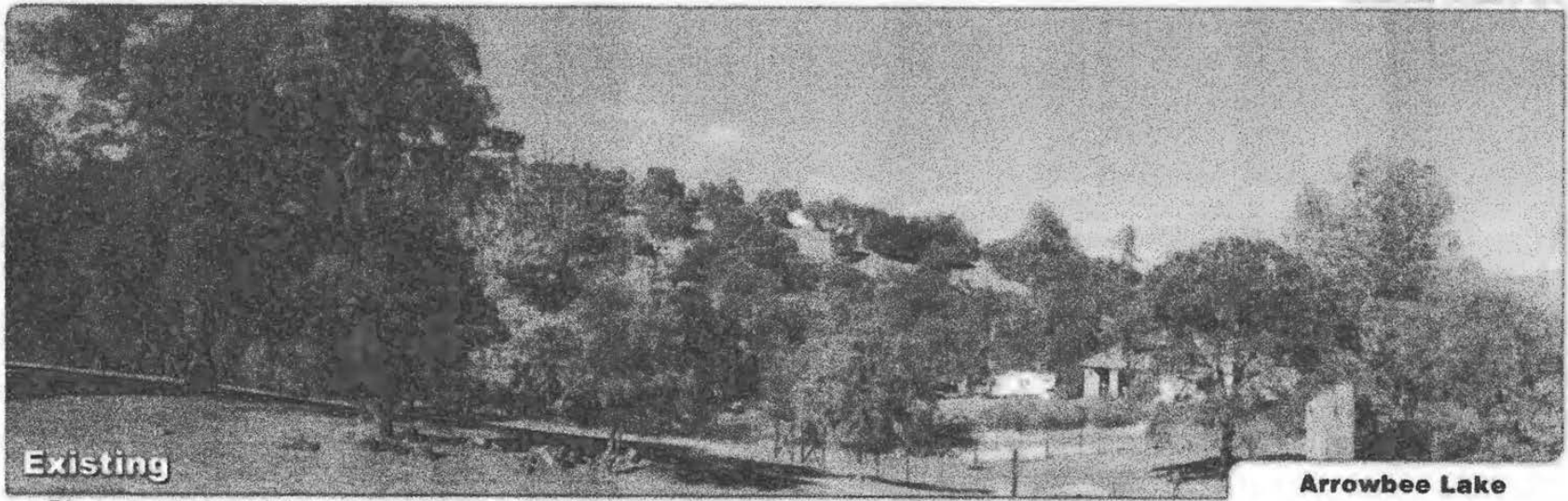
verizonwireless



**Proposed**

\$ 15-0004





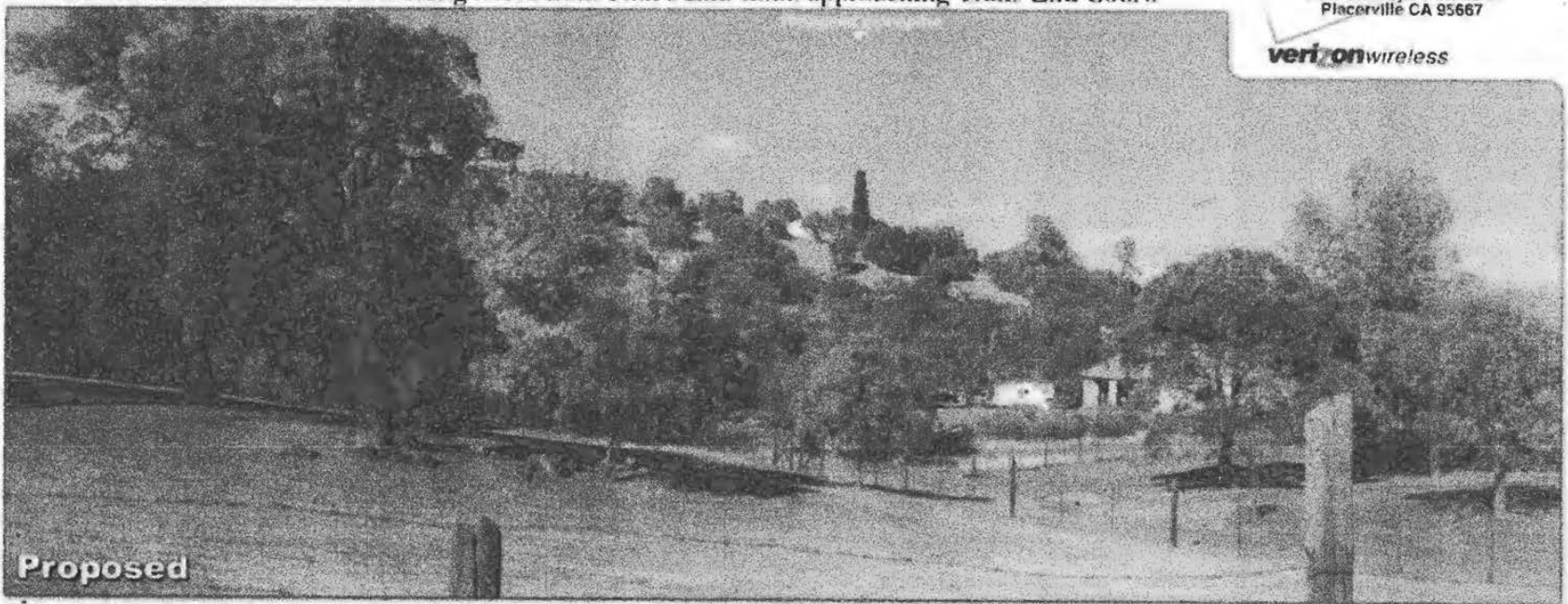
**Existing**

Photosimulation of the view looking north from Trail's End Road approaching Trails End Court.

**Arrowbee Lake**

4131 Birdseye View Lane  
Placerville CA 95667

**verizon**wireless



**Proposed**

© Copyright 2014 Proscenium, Inc. • www.proscenium.com • All rights reserved. This document is a confidential document. The information contained herein is for the use of the client only and is not to be distributed to any other party without the express written consent of Proscenium, Inc.



**Existing**

Photosimulation of the view looking north-northwest from Shoreline Drive approaching Trails End Drive.

**Arrowbee Lake**  
4131 Birdseye View Lane  
Paciarville CA 95667



**Proposed**



© Copyright 2014 Phoenix Parks, Inc. • www.phoenixparks.com • Any modification is made by permission. Nothing is to be construed as a guarantee. This document is for informational purposes only and is not intended to be used for any other purpose.

**PROJECT : Arrowbee Lake - New Bu**

4131 BIRDSEYE VIEW LANE  
PLACERVILLE, CA 95667

LOCATION NO: 269257



PROJECT DESCRIPTION	PROJECT INFORMATION	PROJECT TEAM		SHEET INDEX																		
<p>NEW SITE BUILD UNMANNED TELECOMMUNICATIONS FACILITY:</p> <ol style="list-style-type: none"> <li>1. (P) VERIZON WIRELESS OUTDOOR EQUIPMENT ON (P) 32'-4" x 32'-7" STEEL PLATFORM WITH HAND RAILS</li> <li>2. (P) 30VA DCSEL GENERATOR W/ 132 GALLON UL 142 LISTED TANK ON (P) STEEL PLATFORM</li> <li>3. (P) 10' 3" HEALTH MONOPOL</li> <li>4. ADD (2) 4' MICROWAVE DISHES</li> <li>5. ADD (P) 1/4" FRAME W/ (P) METER, (P) TELCO, AND (P) INTERFECT W/ DISCONNECT</li> <li>6. ADD (2) ANTENNAS PER SECTOR (3 SECTORS) TOTAL OF (6)</li> <li>7. ADD (P) RRIS TOTAL (2) PER SECTOR (3 SECTORS)</li> <li>8. ADD (4) SURGE SUPPRESSORS, (2) MOUNTED AT TOWER, (2) ON 1/4" FRAME</li> <li>9. ADD (2) HYBRID FIBER CABLE</li> <li>10. PLACE (1) GPS ANTENNA ON 1/4" FRAME</li> <li>11. 4' HIGH CHAIN LINK SECURITY FENCE AROUND LEASE AREA</li> </ol>	<p><b>Property Information:</b> Site Name: ARROWBEE LAKE Site Number: 20130F13306 Search Ring: ARROWBEE LAKE Site Address: 4131 BIRDSEYE VIEW LANE PLACERVILLE, CA 95667 A/P/N Number: 105-140-06-10 Current Use: U Zoning: U Jurisdiction: EL DORADO COUNTY Ground Elevation: 1,526' AMSL School District: Placerville Union School District Fire District: Rescue Fire Protection District</p> <p><b>Property Owner:</b> ERIC &amp; ELIZABETH JOHANSON 4131 BIRDSEYE VIEW LANE PLACERVILLE, CA 95667</p> <p><b>Power Agency:</b> PG&amp;E PG&amp;E Corporation 1 Market Street, Special Tower ph: (800) 743-3000</p> <p><b>Telephone Agency:</b> AT&amp;T California 525 MARKET STREET SAN FRANCISCO, CA 94108 ph: (800) 310-2355</p>	<p><b>Construction Mgr.:</b> EPIC WIRELESS GROUP, INC. 8700 ALBURN FOLSOM ROAD, SUITE 400 GRANITE BAY, CA 9574A contact: PETE MANAS email: pete.manas@epicwireless.net ph: (530) 365-8957</p> <p><b>Applicant / Lessee:</b> VERIZON WIRELESS 255 PARKSHORE DRIVE FOLSOM, CA 95630</p> <p><b>Agent for applicant and Planning and Zoning Mgr.:</b> EPIC WIRELESS GROUP, INC. 8700 ALBURN FOLSOM ROAD, SUITE 400 GRANITE BAY, CA 9574A contact: MARK LOMAUOH email: mark.lomauoh@epicwireless.net cell: (916) 203-4047</p>	<p><b>Architect / Engineer:</b> BORDES ARCHITECTURAL GROUP, INC. 1478 STONE POINT DRIVE, SUITE 300 ROSEVILLE, CA 95661 contact: BRIAN K. WINGLOW email: bkr@bordesarch.com ph: (916) 965-7550</p> <p><b>Structural Engineer:</b> NORMAN SCHEEL STRUCTURAL ENGINEER 5022 SUNRISE BLVD FAIR OAK, CA 95628 contact: NORMAN SCHEEL email: norm@nsce.com ph: (916) 536-9555</p> <p><b>Survey:</b> Gel Engineering 1226 High Street Auburn, Ca 95603-5015 contact: NEIL RONDE email: nronde@pacbell.net ph: (530) 865-0425</p> <p><b>RF Engineer:</b> VERIZON WIRELESS 255 PARKSHORE DRIVE FOLSOM, CA 95630 contact: SHERON MALIANA email: sheron.maliana@verizonwireless.com ph: (925) 788-1663</p>	<p>A-0 TITLE SHEET</p> <p>C-1 SURVEY - SITE TOPOGRAPHY</p> <p>A-1 OVERALL SITE PLAN</p> <p>A-2 ENLARGED SITE PLAN</p> <p>A-3 EQUIPMENT &amp; ANTENNA LAYOUTS</p> <p>A-4.1 ELEVATIONS</p> <p>A-4.2 ELEVATIONS</p> <p>A-5.1 GENERATOR SPECIFICATION</p>																		
<p><b>CODE COMPLIANCE</b></p>	<p><b>VICINITY MAP</b></p>																					
<p>ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES, NOTHING IN THESE PLANS IS TO BE CONSTRUED TO PERMIT WORK NOT CONFORMING TO THESE CODES.</p> <ol style="list-style-type: none"> <li>1. 2013 CALIFORNIA ADMINISTRATIVE CODE, CHAPTER 16, PART 1, TITLE 24 CODE OF REGULATIONS</li> <li>2. 2013 CALIFORNIA BUILDING CODE (CBC) WITH CALIFORNIA AMENDMENTS, BASED ON THE 2012 IBC (PART 2), VOLS. 1-2</li> <li>3. 2013 CALIFORNIA RESIDENTIAL CODE (CRC) WITH APPENDIX H, PATIO COVERS, BASED ON THE 2012 IBC (PART 2.8)</li> <li>4. 2013 CALIFORNIA GREEN BUILDING STANDARDS CODE (CALGREEN) (PART 1)</li> <li>5. UNRECTIFIED ENERGY PROVISIONS (04.1)</li> <li>6. 2013 CALIFORNIA FIRE CODE (CFC), BASED ON THE 2012 IFC, WITH CALIFORNIA AMENDMENTS (PART 9)</li> <li>7. 2013 CALIFORNIA MECHANICAL CODE (CMC), BASED ON THE 2012 IMAC (PART 4)</li> <li>8. 2013 CALIFORNIA PLUMBING CODE (CPC), BASED ON THE 2012 UPC (PART 3)</li> <li>9. 2013 CALIFORNIA ELECTRICAL CODE (CEC) WITH CALIFORNIA AMENDMENTS, BASED ON THE 2011 NEC (PART 2)</li> <li>10. 2013 CALIFORNIA ENERGY CODE (CEC), AFTER JULY 1, 2014 (PART 4)</li> <li>11. AMI / BA-TA-222-G</li> <li>12. 2013 NFPA 101, LIFE SAFETY CODE</li> <li>13. 2013 NFPA 72, NATIONAL FIRE ALARM CODE</li> <li>14. 2013 NFPA 13, FIRE SPRINKLER CODE</li> </ol>		<p><b>DIRECTIONS FROM VERIZON WIRELESS</b></p> <p>DIRECTIONS FROM VERIZON WIRELESS' OFFICE AT 255 PARKSHORE DRIVE, FOLSOM, CA</p> <ol style="list-style-type: none"> <li>1. Head northeast on Parkshore Dr toward Colledge Dr</li> <li>2. Turn left onto Plaza Dr</li> <li>3. Take the 1st right to stay on Plaza Dr</li> <li>4. Take the 1st left onto Blue Star Ave Rd</li> <li>5. Turn right onto Praline City Rd</li> <li>6. Merge onto US-50 via the ramp to 3 Lake Tahoe</li> <li>7. Take the exit toward South Shingler Rd</li> <li>8. Turn left onto S Shingler Rd (signs for US-50 W/Sacramento)</li> <li>9. Turn right onto H Shingler Rd</li> <li>10. Continue straight onto Green Valley Rd</li> <li>11. Continue onto Lotus Rd</li> <li>12. Turn left onto Luneman Rd</li> <li>13. Continue onto Arrowbee Dr</li> <li>14. Turn left onto Longa Oak Dr</li> <li>15. Take the 1st left onto Birdseye View Dr</li> <li>16. Sharp left onto Birdseye View Ln Destination will be on the left</li> </ol>		<p><b>VERIZON SIGNATURE BLOCK</b></p> <table border="1"> <thead> <tr> <th>DISCIPLINE:</th> <th>SIGNATURE:</th> </tr> </thead> <tbody> <tr> <td>SITE ACQUISITION:</td> <td></td> </tr> <tr> <td>CONSTRUCTION:</td> <td></td> </tr> <tr> <td>RF:</td> <td></td> </tr> <tr> <td>MICROWAVE:</td> <td></td> </tr> <tr> <td>TELCO:</td> <td></td> </tr> <tr> <td>EQUIPMENT:</td> <td></td> </tr> <tr> <td>PROJECT ADMINISTRATOR:</td> <td></td> </tr> <tr> <td>WO ADMINISTRATOR:</td> <td></td> </tr> </tbody> </table>	DISCIPLINE:	SIGNATURE:	SITE ACQUISITION:		CONSTRUCTION:		RF:		MICROWAVE:		TELCO:		EQUIPMENT:		PROJECT ADMINISTRATOR:		WO ADMINISTRATOR:	
DISCIPLINE:	SIGNATURE:																					
SITE ACQUISITION:																						
CONSTRUCTION:																						
RF:																						
MICROWAVE:																						
TELCO:																						
EQUIPMENT:																						
PROJECT ADMINISTRATOR:																						
WO ADMINISTRATOR:																						
<p><b>OCCUPANCY AND CONSTRUCTION TYPE</b></p>	<p>POST INSTALLED CONCRETE WEDGE ANCHORS</p>		<p><b>GENERAL CONTRACTOR NOTES</b></p>																			
<p>OCCUPANCY: U (UNMANNED) CONSTRUCTION TYPE: V-8 <b>DISABLED ACCESS REQUIREMENTS</b> FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. ACCESSIBILITY ACCESS IS NOT REQUIRED, IN ACCORDANCE WITH CALIFORNIA BUILDING CODE, CODE OF REGULATIONS, TITLE 24, PART 2, VOLUME 1, CHAPTER 118, DIVISION 2, SECTION 118-020.5.</p>	<p><b>SPECIAL INSPECTIONS</b></p>		<p><b>DO NOT SCALE DRAWINGS</b> THESE DRAWINGS ARE FORMATTED TO BE FULL SIZE AT 3/4" x 3/4". CONTRACTORS SHALL VERIFY ALL PLANS AND EXISTING DIMENSIONS AND CONDITIONS ON THE JOBSITE AND SHALL IMMEDIATELY NOTIFY THE ARCHITECT/ENGINEER IN WRITING OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK OR MATERIAL ORDERS OR BE RESPONSIBLE FOR THE SAME.</p>																			



**Exhibit F1-F8**

BOUNDARY SHOWN IS BASED ON MONUMENTATION FOUND AND RECORD INFORMATION. THIS IS NOT A BOUNDARY SURVEY. THIS IS A SPECIALIZED TOPOGRAPHIC MAP WITH PROPERTY LINES AND EASEMENTS BEING A GRAPHIC DEPICTION BASED ON INFORMATION GATHERED FROM VARIOUS SOURCES OF RECORD AND AVAILABLE MONUMENTATION FOUND DURING THE FIELD SURVEY. NO EASEMENTS WERE RESEARCHED OR PLOTTED. PROPERTY LINES AND LINES OF TITLE WERE NOT INVESTIGATED NOR SURVEYED. NO PROPERTY MONUMENTS WERE SET.

THESE DRAWINGS AND/OR THE ACCOMPANYING SPECIFICATION AS INSTRUMENTS OF SERVICE, ARE THE EXCLUSIVE PROPERTY OF GEL ENGINEERING AND THEIR USE AND PUBLICATION SHALL BE RESTRICTED TO THE ORIGINAL SITE AND CARRIER FOR WHICH THEY ARE PREPARED. REUSE, REPRODUCTION OR PUBLICATION BY ANY METHOD, IN WHOLE OR IN PART, IS PROHIBITED EXCEPT BY WRITTEN PERMISSION FROM GEL ENGINEERING TITLE TO THESE PLANS AND/OR SPECIFICATIONS SHALL REMAIN WITH GEL ENGINEERING WITHOUT PREJUDICE AND VISUAL CONTACT WITH THEM SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF ACCEPTANCE OF THESE RESTRICTIONS.

DATE OF SURVEY: 08-22-14  
 SURVEYED BY OR UNDER DIRECTION OF: KENNETH D. GEL, R.C.E. 14803  
 LOCATED IN THE COUNTY OF EL DORADO, STATE OF CALIFORNIA

BEARINGS SHOWN ARE BASED UPON MONUMENTS FOUND AND RECORD INFORMATION. THIS IS NOT A BOUNDARY SURVEY.

ELEVATIONS SHOWN ON THIS PLAN ARE BASED UPON U.S.G.S. N.A.V.D. 88 DATUM, ABOVE MEAN SEA LEVEL.

N.G.V.D. 1929 CORRECTION: SUBTRACT XXX' FROM ELEVATIONS SHOWN.

CONTOUR INTERVAL: 1'

CONTRACTOR IS RESPONSIBLE TO VERIFY LEASE AREA PRIOR TO CONSTRUCTION.

ASSESSOR'S PARCEL NUMBER: 105-140-06-10

OWNER(S): ERIC & ELIZABETH JOHANSON  
 4131 BIRDSEYE VIEW LANE  
 PLACERVILLE, CA 95667

Gel Engineering  
 Engineering • Surveying • Planning  
 1226 High Street  
 Auburn, California 95803-5015  
 Phone: (530) 895-0426 • Fax: (530) 823-1300

Verizon Wireless

Project Name: Arrowbee Lake

Project Site Location: 4131 Birdseye View Lane  
 Placerville, CA 95667  
 El Dorado County

Date of Observation: 08-22-14

Equipment/Procedures Used to Obtain Coordinates: Trimble Pathfinder Pro  
 10, post processed with Pathfinder Office software.

Type of Antenna Mount: Proposed Monopine

Coordinates

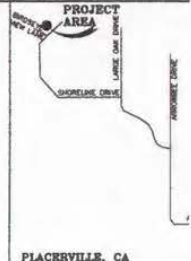
Latitude: N 38° 47' 48.74" (NAD83) N 38° 47' 49.10" (NAD27)

Longitude: W 120° 50' 36.03" (NAD83) W 120° 50' 34.24" (NAD27)

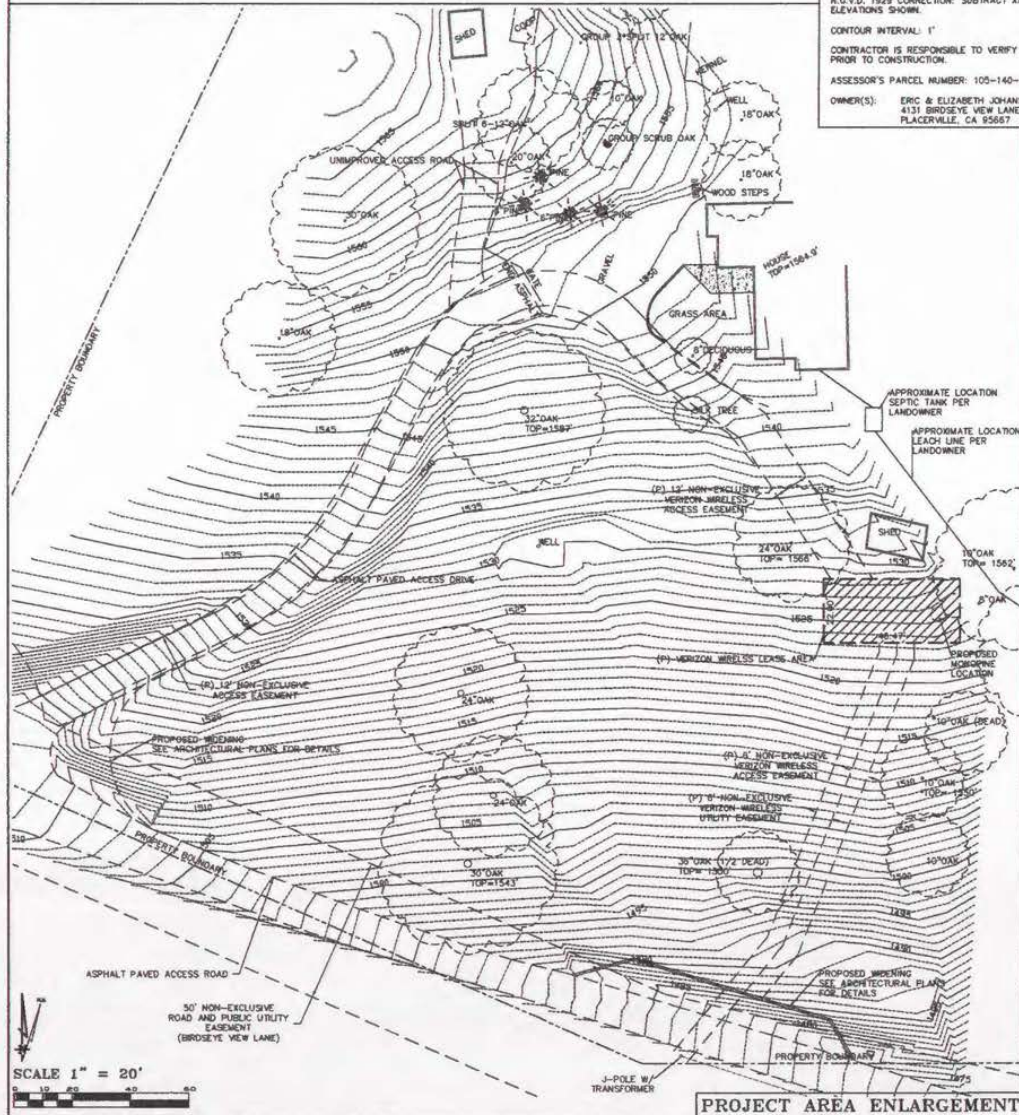
ELEVATION of Ground at Structure (NAVD83) 1526' AMSL

CERTIFICATION: I, the undersigned, do hereby certify elevation listed above is based on a field survey done under my supervision and that the accuracy of those elevations meet or exceed 1-A Standards as defined in the FAA ASAC Information Sheet 01/03, and that they are true and accurate to the best of my knowledge and belief.

Kenneth D. Gel California RCE 14803



PLACERVILLE, CA



**Lease Area Description**

All that certain lease area being a portion of that certain Parcel 2 as is shown on that certain Parcel Map Recorded at Book 26 of Placerville, California, and being a portion of Section 23, Township 11 North, Range 2 East, M.D.S. & M., being more or less containing a 3/4" Copied Iron Pipe stamped L54434 set for the Southeast corner of the above referenced parcel 2 from which a 200.03 feet; thence from said point of commencement North 54°22'50" West 245.41 feet to the True Point of Beginning; thence from 46.47 feet; thence North 22.00 feet; thence East 46.47 feet; thence South 22.00 feet to the True Point of Beginning.

Together with a non-exclusive easement for utility purposes six feet in width the centerline of which is described as follows: Beginning boundary of the above described lease area which bears West 24.54 feet from the Southeast corner thereof and running thence South West 106.68 feet; thence South 39°18'50" West 51 feet more or less to the existing utility pole.

Also together with a non-exclusive easement for access purposes six feet in width the centerline of which is described as follows: Beginning boundary of the above described lease area which bears West 16.54 feet from the Southeast corner thereof and running thence South West 106.76 feet; thence South 39°18'50" West 19 feet more or less to the existing access improvements.

Also together with a non-exclusive easement for access purposes being twelve feet in width from the above described lease area North roadway; thence over and across the underlying parcel and existing traveled way as shown on the "Overall Site Plan" to the existing no-ow and across said road easement to the public right of way. Said access to include turn-around and widening areas as shown here

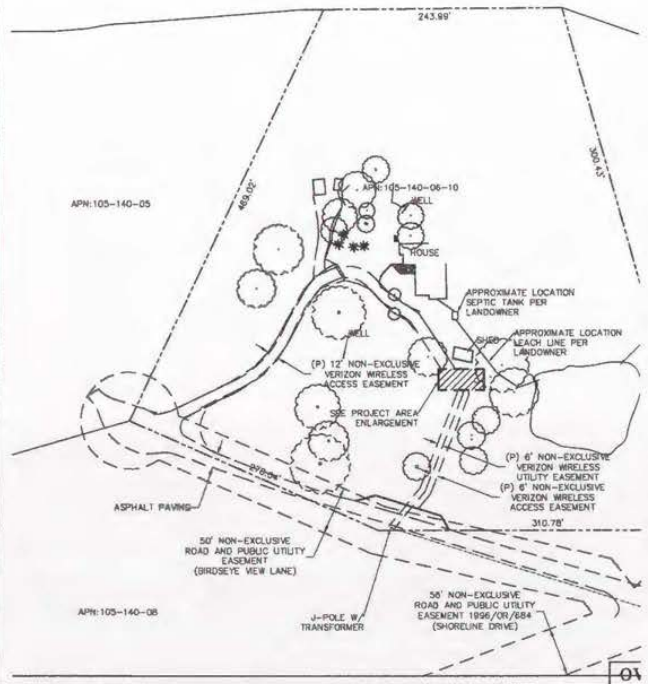
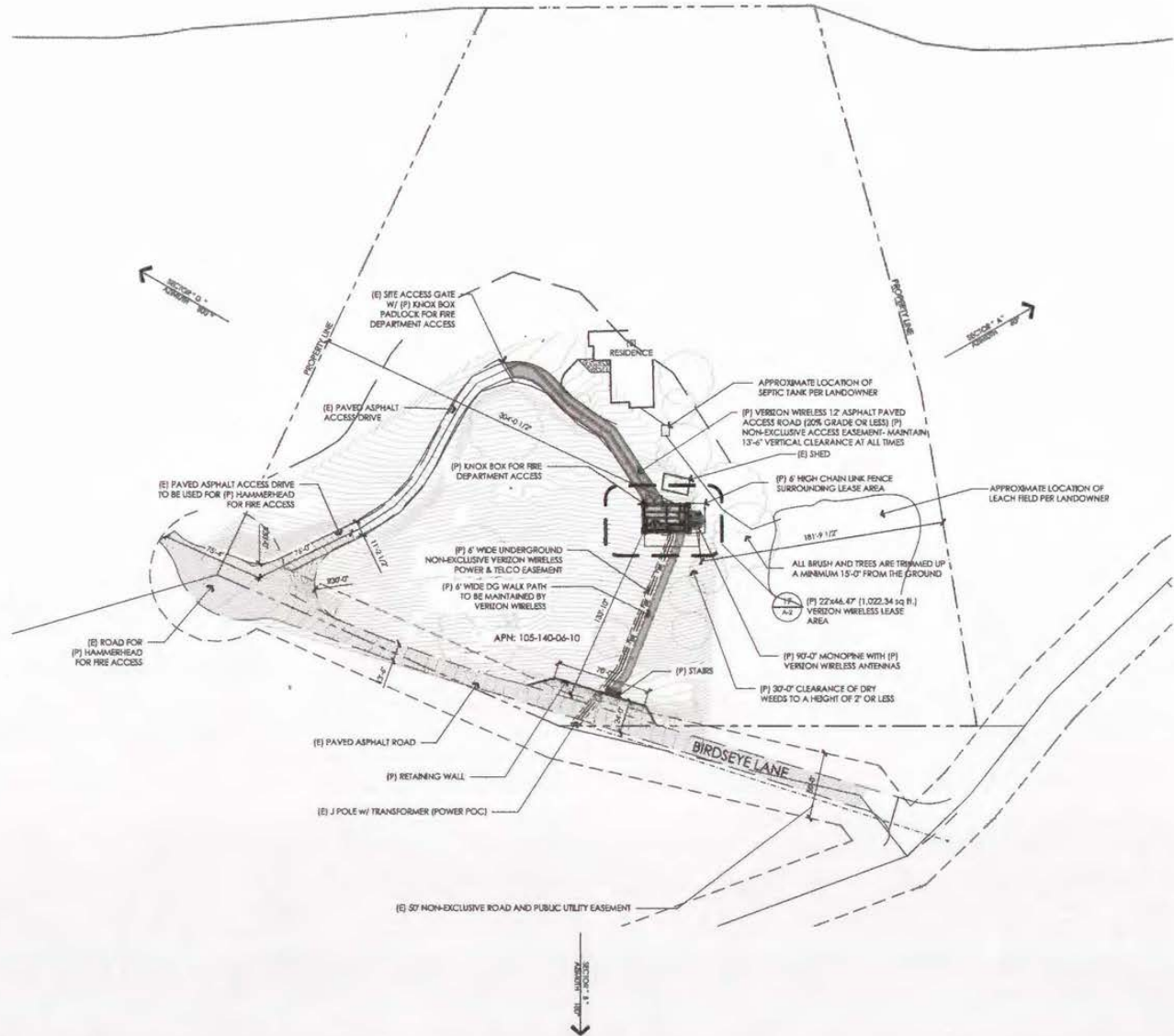


Exhibit F1-F8

**THIS IS NOT A SITE SUR**  
 ALL PROPERTY BOUNDARIES, ORIENTATIONS AND STREET HALF-WIDTHS OBTAINED FROM A TAX PARCEL MAP DRAWINGS AND ARE APPROXIMATE.

- NOTES:**
1. NO GRADING OR PERMANENT CUT SHALL OCCUR WITHIN DRIP LINES ARE TO REMAIN WITHOUT ARBOR.
  2. PRIOR TO CONSTRUCTION, GENERAL CONTRACTOR TO CONTACT DIGITARY OUT EXISTING UNDERGROUND UTILITIES. IN EVENT OF CONFLICTS, CONTRACTOR TO CONTACT PDC.

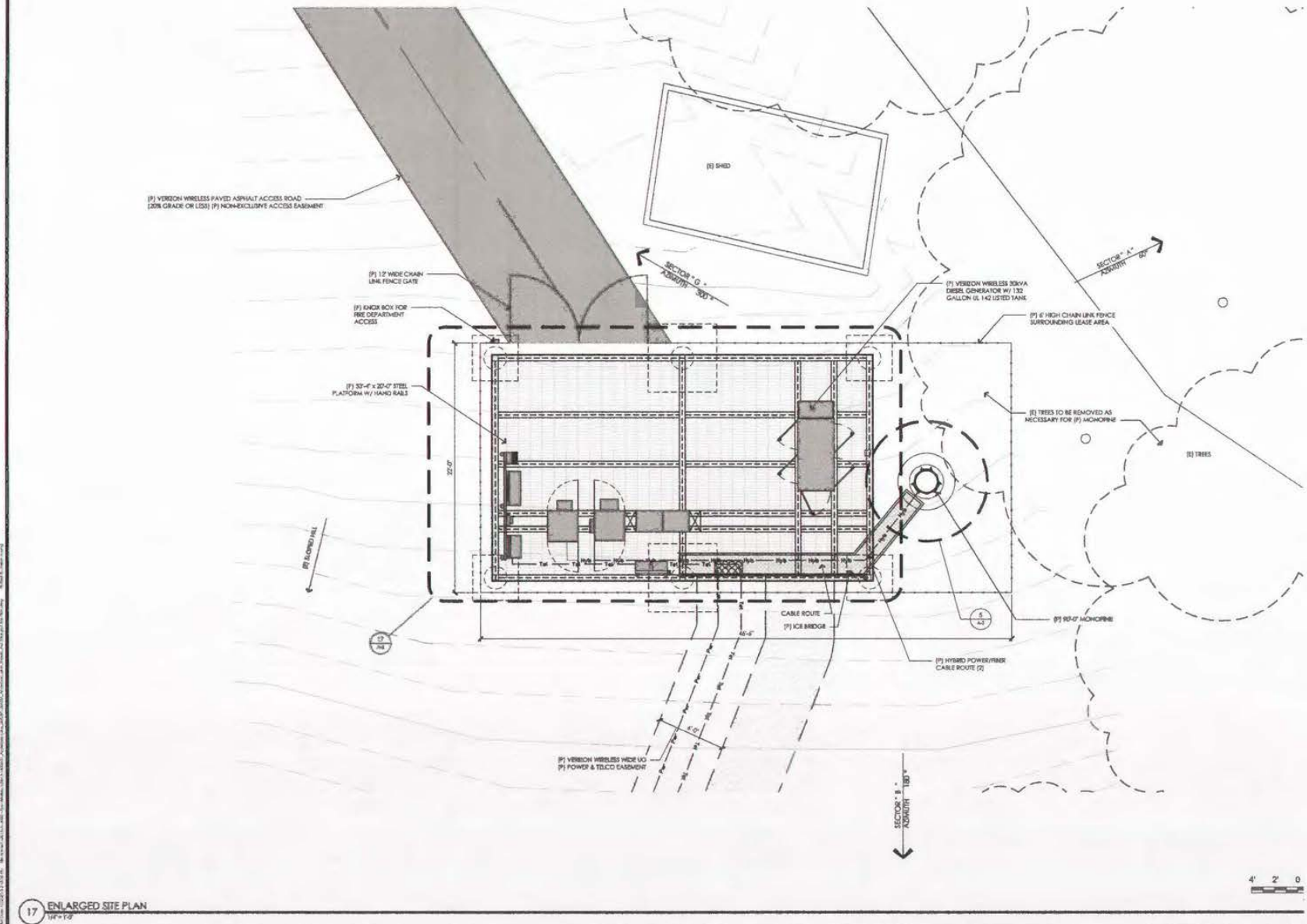


17 OVERALL SITE PLAN  
 7-1-2017

40' 20'



Exhibit F1-F8



17 ENLARGED SITE PLAN  
1/14/17

4' 2' 0"



Exhibit F1-F8

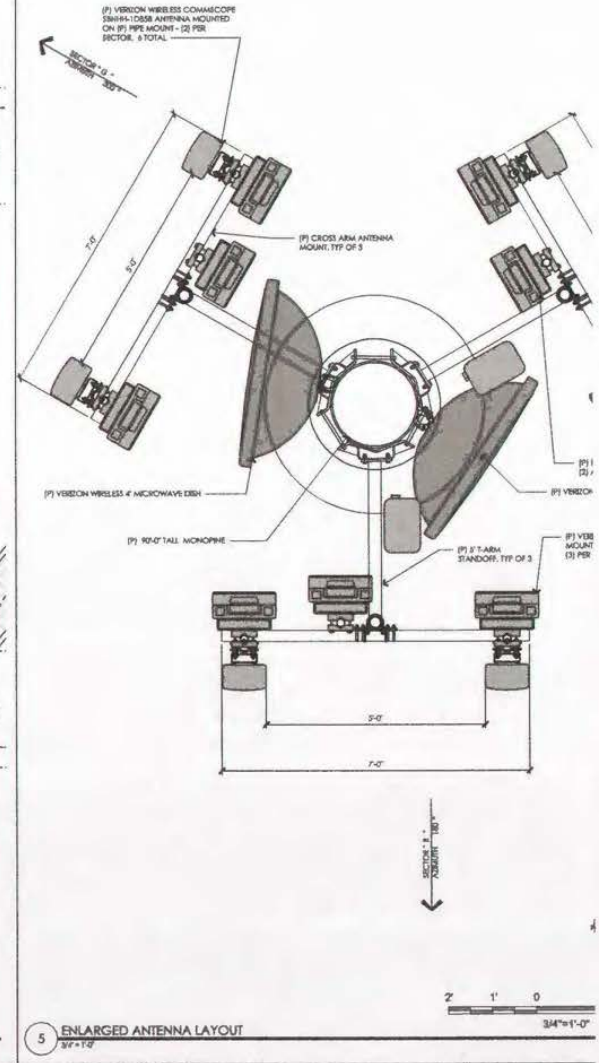
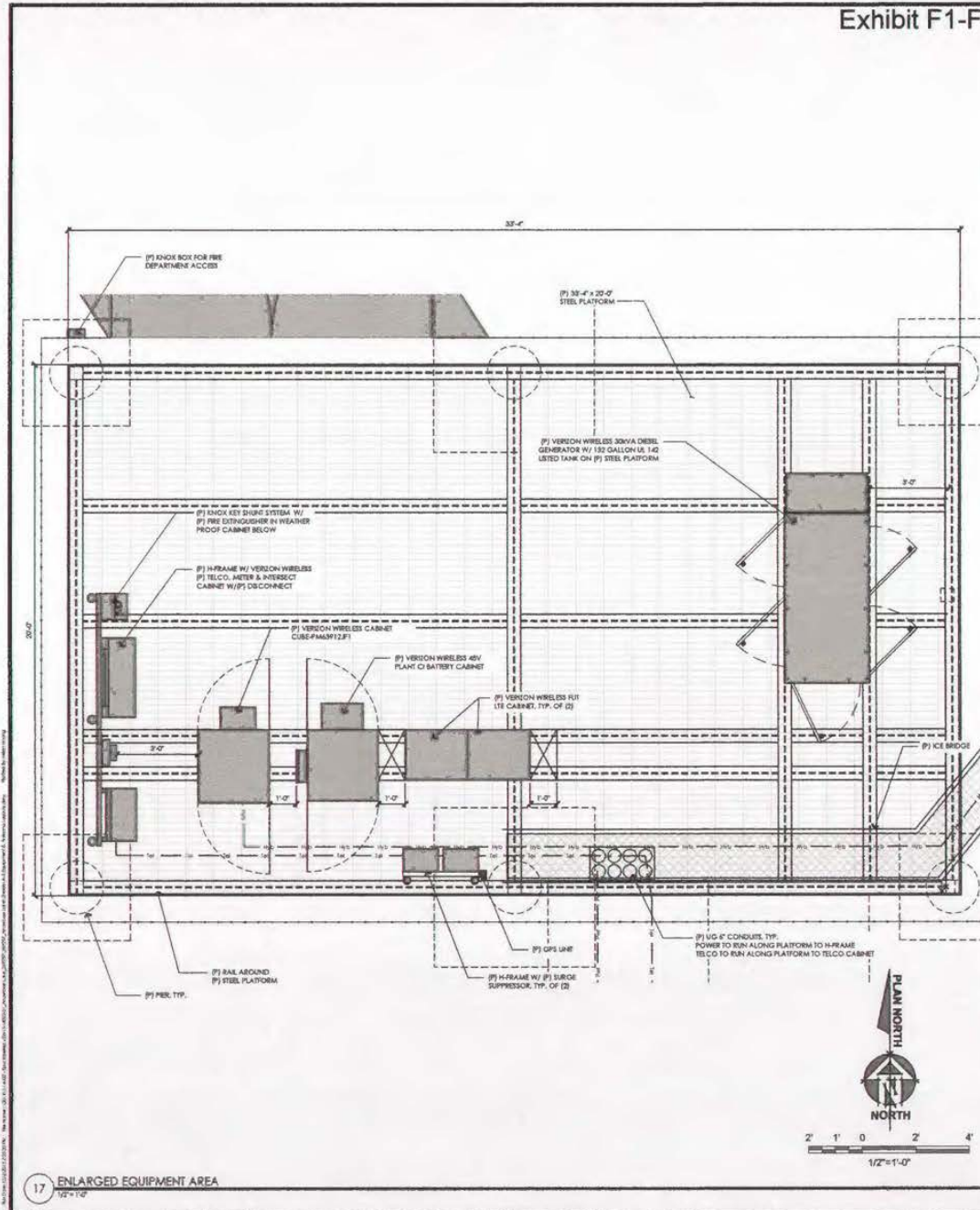
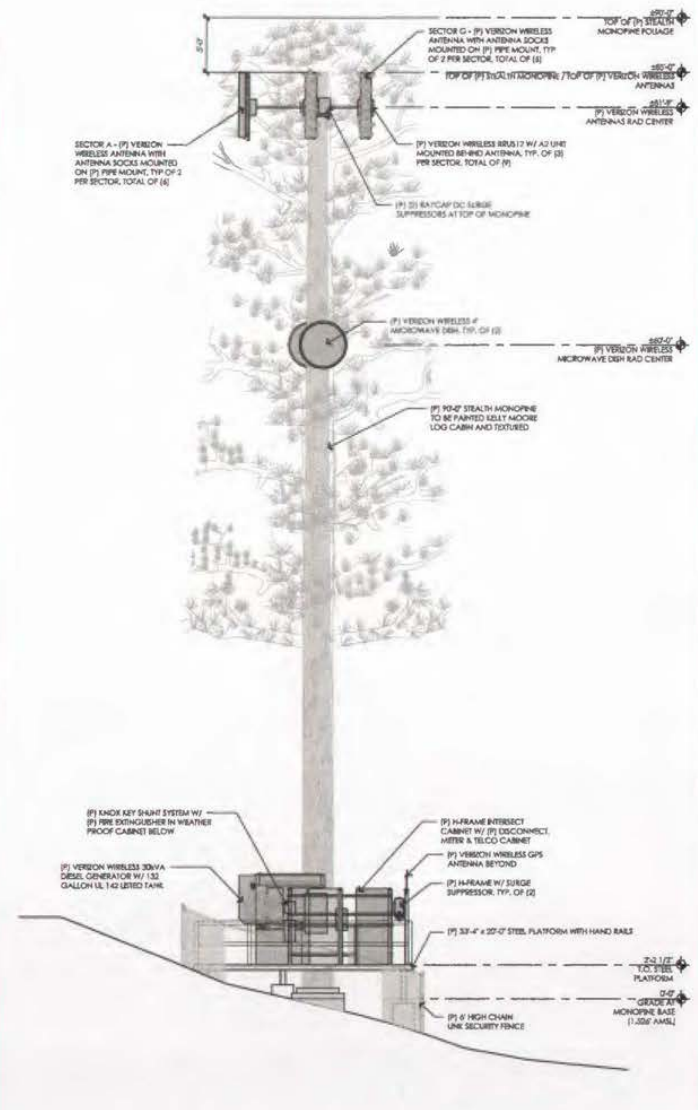
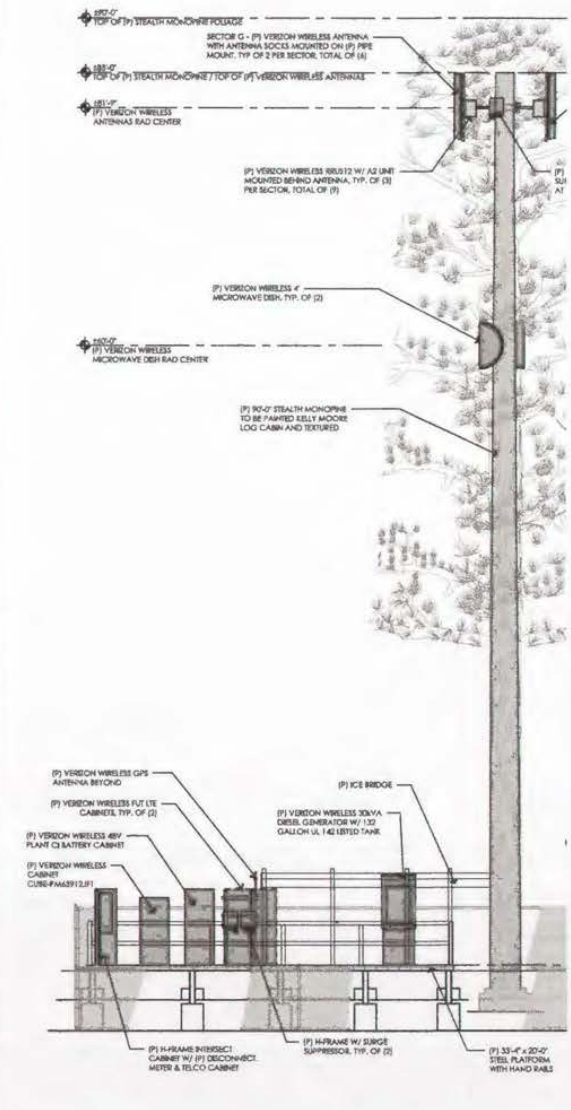


Exhibit F1-F8



13 PROPOSED WEST ELEVATION  
UF-F8



5 PROPOSED SOUTH ELEVATION  
UF-F8

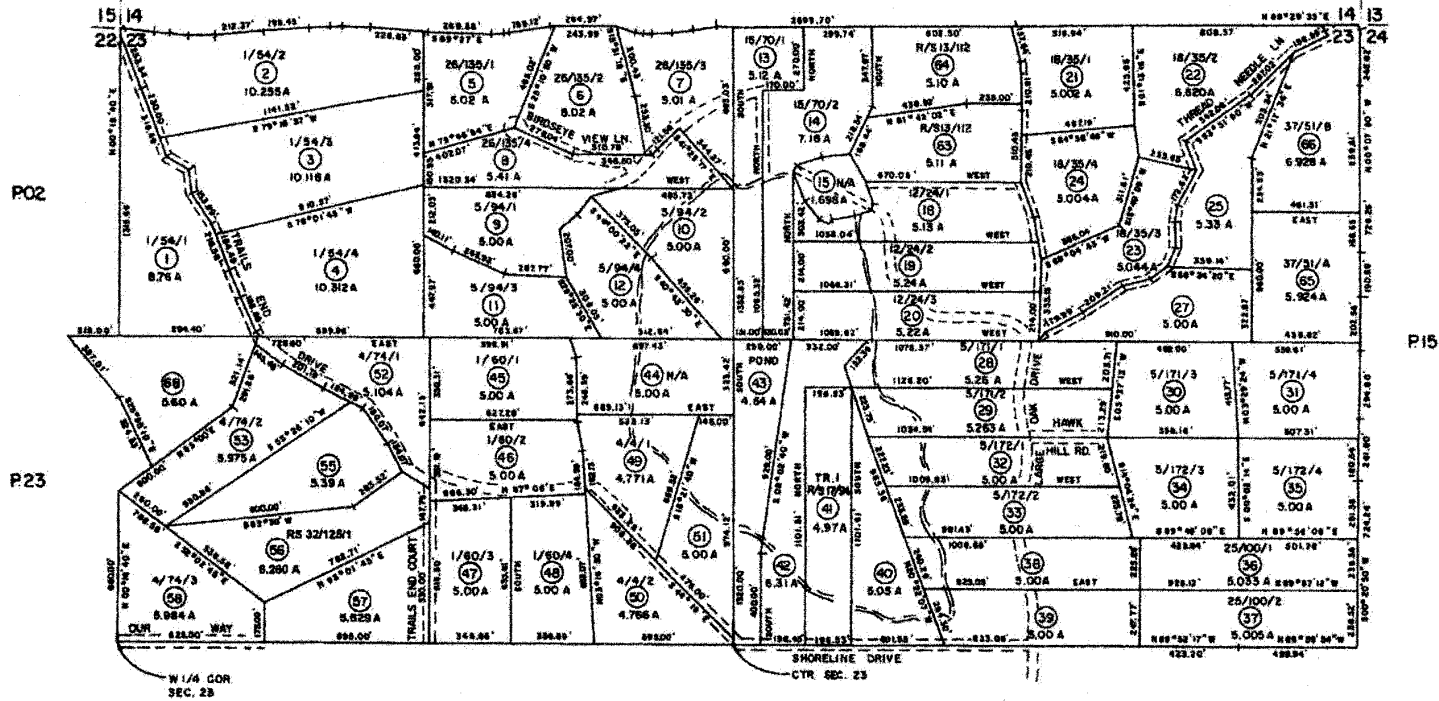






15 FEB 12 PM 4:45  
RECEIVED  
PLANNING DEPARTMENT

P02



P16

REV. 4/28/2011

Assessor's Map Bk. 105 - Pg. 16  
County of El Dorado, California

THIS MAP IS NOT A SURVEY, it is prepared by the El Dorado Co. Assessor's office for assessment purposes only.

NOTES - Assessor's Block Numbers Shown in Blue  
Assessor's Parcel Numbers Shown in Green



**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Ranch Estates

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/13/2016	10:45	Wilcox	4G/ 2B	X		X		X	
2/13/2016	10:53	4120 Birds Eye	4G/ 2B	X		X		X	
2/13/2016	10:56	Powel 1020 Shoreline	4G/ 2B	X		X		X	
2/13/2016	10:59	Meigs 1081 Shoreline	4G/ 2B	X		X		X	
2/13/2016	11:02	1120 Shoreline	4G/ 3B	X		X		X	
2/13/2016	11:11	1151 Shoreline	4G/ 3B	X		X		X	
2/13/2016	11:12	1240 Crooked Mile	4G/ 3B	X		X		X	
2/13/2016	11:16	4200 Brook Haven	4G/ 3B	X		X		X	
2/13/2016	11:17	4201 Brook Haven	4G/ 3B	X		X		X	
2/13/2016	11:20	4510 Wistling Wind	4G/ 4B	X		X		X	
2/13/2016	11:21	4519 Wistling Wind	4G/ 4B	X		X		X	
2/13/2016	11:22	4451 Wistling Wind	4G/ 4B	X		X		X	
2/13/2016	11:24	4435 Wistling Wind	4G/ 3B	X		X		X	
2/13/2016	11:27	1290 Crooked Mile	4G/ 3B	X		X		X	
2/13/2016	11:28	1301 Crooked Mile	4G/ 3B	X		X		X	
2/13/2016	11:30	1331 Crooked Mile	4G/ 1B	X		X		X	
2/13/2016	11:31	1348 Crooked Mile	4G/ 1B	X		X		X	
2/13/2016	11:33	1350 Crooked Mile	4G/ 1B	X		X		X	
2/13/2016	11:35	1355 Crooked Mile	4G/ 1B	X		X		X	
2/13/2016	11:37	1363 Crooked Mile	4G/ 1B	X		X		X	



**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Ranch Estates

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/13/2016	11:38	1375 Crooked Mile	Lowest	4G/1B	X		X		X
2/13/2016	11:40	1395 Crooked Mile	Lowest	3G/2B	X		X		X
2/13/2016	11:41	1400 Crooked Mile	Lowest	3G/2B	X		X		X
2/13/2016	11:43	1455 Crooked Mile		3G/1B	X		X		X
2/13/2016	11:44	1460 Crooked Mile		3G/1B	X		X		X
2/13/2016	11:45	1480 Crooked Mile		3G/1B		X	X		X
2/13/2016	11:47	1487 Crooked Mile		3G/1B		X	X		X
2/13/2016	11:48	1510 Crooked Mile		3G/1B		X	X		X
2/13/2016	11:49	1521 Crooked Mile		3G/1B		X	X		X
2/13/2016	11:51	1540 Crooked Mile		3G/1B	X		X		X
2/13/2016	12:03	1391 Big Curve Ct.		3G	X		X		X
2/13/2016	12:04	1405 Big Curve Ct.		4G	X		X		X
2/13/2016	12:46	1181 Shoreline		4G/4B	X		X		X
2/13/2016	12:52	1121 Large Oak		4G/4B	X		X		X
2/13/2016	12:54	1131 Large Oak		4G/4B	X		X		X
2/13/2016	12:55	1140 Large Oak		4G/4B	X		X		X
2/13/2016	12:56	4580 Thread Needle		4G/3B	X		X		X
2/13/2016	12:58	1182 Large Oak		4G/3B	X		X		X
2/13/2016	12:59	1176 Large Oak		4G/3B	X		X		X

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Ranch Estates

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/13/2016	1:01	4620 Hawk Hill	4G/4B	X		X		X	
2/13/2016	1:03	1190 Large Oak	4G/4B	X		X		X	
2/13/2016	1:04	1180 Large Oak	4G/4B	X		X		X	
2/13/2016	1:05	1231 Large Oak	4G/4B	X		X		X	
2/13/2016	1:07	1261 Large Oak	4G/4B	X		X		X	
2/13/2016	1:08	1277 Large Oak	4G/4B	X		X		X	
2/13/2016	1:10	1295 Large Oak	4G/4B	X		X		X	
2/13/2016	1:11	1310 Large Oak	4G/4B	X		X		X	
2/13/2016	1:14	1160 Arrowbee	4G/4B	X		X		X	
2/13/2016	1:16	1180 Arrowbee	4G/4B	X		X		X	
2/13/2016	1:17	1181 Arrowbee	4G/4B	X		X		X	
2/13/2016	1:19	4639 River View	4G/4B	X		X		X	
2/13/2016	1:20	4647 River View	4G/4B	X		X		X	
2/13/2016	1:22	1212 Arrowbee	4G/3B	X		X		X	
2/13/2016	1:23	1224 Arrowbee	4G/3B	X		X		X	
2/13/2016	1:25	1241 Arrowbee	4G/2B	X		X		X	
2/13/2016	1:27	4670 Schirle	4G/2B	X		X		X	
2/13/2016	1:28	4700 Schirle	4G/3B	X		X		X	
2/13/2016	1:29	4701 Schirle	4G/3B	X		X		X	
2/13/2016	1:31	4734 Schirle	4G/3B	X		X		X	

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Ranch Estates

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/13/2016	1:35	4665 Casual Ct.	4G/4B	X		X		X	
2/13/2016	1:36	4700 Casual Ct.	4G/4B	X		X		X	
2/13/2016	1:37	4707 Casual Ct.	4G/4B	X		X		X	
2/13/2016	1:39	1400 McKee Dr.	4G/4B	X		X		X	
2/13/2016	1:40	1420 McKee Dr.	4G/4B	X		X		X	
2/13/2016	1:41	1315 Arrowbee	4G/4B	X		X		X	
2/13/2016	1:43	4540 Burnt Oak	4G/2B	X		X		X	
2/13/2016	1:44	4541 Burnt Oak	4G/2B	X		X		X	
2/13/2016	1:47	4540 Stoney Ridge	4G/3B	X		X		X	
2/13/2016	1:48	4544 Stoney Ridge	4G/3B	X		X		X	
2/13/2016	1:49	4555 Stoney Ridge	4G/3B	X		X		X	
2/13/2016	1:51	4630 Stoney Ridge	4G/5B	X		X		X	
2/13/2016	1:52	4631 Stoney Ridge	4G/5B	X		X		X	
2/13/2016	1:54	2230 Burrmac	4G/3B	X		X		X	
2/13/2016	1:55	2231 Burrmac	4G/3B	X		X		X	
2/13/2016	1:56	2250 Burrmac	4G/3B	X		X		X	
2/13/2016	1:58	1393 Arrowbee	4G/2B	X		X		X	
2/13/2016	2:01	1431 Old Ranch	4G/2B	X		X		X	
2/13/2016	2:03	1470 Old Ranch	4G/2B	X		X		X	
2/13/2016	2:05	1500 Old Ranch	4G/2B	X		X		X	

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Ranch Estates

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
12/13/2016	2:07	Wonderment	4G/3B	X		X		X	
12/13/2016	2:10	1550 Old Ranch	4G/3B	X		X		X	
12/13/2016	2:12	1552 Old Ranch	4G/3B	X		X		X	
12/13/2016	2:14	Luneman and Old Ranch	4G/3B	X		X		X	
12/13/2016	2:16	1550 Arrowbee	4G/2B	X		X		X	
12/13/2016	2:17	1581 Arrowbee	4G/2B	X		X		X	
12/13/2016	2:18	1590 Arrowbee	4G/2B	X		X		X	
12/13/2016	2:19	1536 Arrowbee	4G/2B	X		X		X	
12/13/2016	2:21	1537 Arrowbee	4G/2B	X		X		X	
12/13/2016	2:22	1525 Arrowbee	4G/2B	X		X		X	
12/13/2016	2:24	1501 Arrowbee	4G/4B	X		X		X	
12/13/2016	2:25	1502 Arrowbee	4G/4B	X		X		X	
12/13/2016	2:26	1485 Arrowbee	4G/4B	X		X		X	
12/13/2016	2:27	1484 Arrowbee	4G/4B	X		X		X	
12/13/2016	2:29	1440 Arrowbee	4G/4B	X		X		X	
12/13/2016	2:30	1445 Arrowbee	4G/4B	X		X		X	
12/13/2016	2:33	1484 Mewuk	4G/4B	X		X		X	
12/13/2016	2:34	1486 Mewuk	4G/4B	X		X		X	
12/13/2016	2:36	1400 Kathy Ann	4G/4B	X		X		X	
12/13/2016	2:39	4560 Mewuk	4G/4B	X		X		X	

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Ranch Estates

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/13/2016	2:44	4800 Glory View	4G/2B	X		X		X	
2/13/2016	2:45	4859 Glory View	4G/2B	X		X		X	
2/13/2016	2:46	4844 Glory View	4G/2B	X		X		X	
2/13/2016	2:47	4860 Glory View	4G/2B	X		X		X	
2/13/2016	2:48	4980 Glory View	3G/4B	X		X		X	
2/13/2016	2:50	5020 Glory View	4G/4B	X		X		X	
2/13/2016	2:51	5050 Glory View	4G/4B	X		X		X	
2/13/2016	2:53	5105 Glory View	4G/3B	X		X		X	
2/13/2016	2:55	5141 Glory View	4G/3B	X		X		X	

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Hills aka Lower Lake Estates

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/15/2016	9:45	Corner of Crooked Mile and Burnt Shanty Creek	3G/2B	X		X		X	
2/15/2016	9:48	1320 Burnt Shanty Creek	3G/4B	X		X		X	
2/15/2016	9:52	1281 Burnt Shanty Creek	4G/2B	X		X		X	
2/15/2016	9:55	1230 Burnt Shanty Creek	4G/2B	X		X		X	
2/15/2016	9:59	1188 Burnt Shanty Creek	4G/2B	X		X		X	
2/15/2016	10:02	1201 Spring Crest Ct.	4G/2B	X		X		X	
2/15/2016	10:04	4104 Our Way	4G/2B	X		X		X	
2/15/2016	10:06	2004 Spring Crest Ct.	4G/4B	X		X		X	
2/15/2016	10:08	1085 Spring Crest Ct.	4G/4B	X		X		X	
2/15/2016	10:11	1060 Spring Crest Ct.	4G/1B	X		X		X	
2/15/2016	10:14	1090 Spring Crest Ct.	4G/2B	X		X		X	
2/15/2016	10:22	Corner of Burnt Shanty Creek and Old Rock Bridge	3G/3B	X		X		X	
2/15/2016	10:25	1220 Old Rock Bridge	3G/2B	X		X		X	
2/15/2016	10:30	1181 Old Rock Bridge	3G/2B	X		X		X	
2/15/2016	10:32	Corner of Old Rock Bridge Paw Print	3G/2B	X		X		X	
2/15/2016	10:37	2700 Paw Print	3G/2B	X		X		X	
2/15/2016	10:40	2600 Paw Print	3G/2B	X		X		X	
2/15/2016	10:42	2530 Paw Print	3G/2B	X		X		X	
2/15/2016	10:44	2535 Paw Print	3G/4B	X		X		X	
2/15/2016	10:45	2537 Paw Print	3G/4B	X		X		X	

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Hills aka Lower Lake Estates

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/15/2016	10:55	1240 Utopia	4G/3B	X		X		X	
2/15/2016	10:57	1257 Old Rock Bridge	4G/3B	X		X		X	
2/15/2016	10:58	1267 Old Rock Bridge	4G/3B	X		X		X	
2/15/2016	11:00	1269 Tree Top	4G/4B	X		X		X	
2/15/2016	11:03	1244 Tree Top	4G/4B	X		X		X	
2/15/2016	11:06	1225 Tree Top	4G/4B	X		X		X	
2/15/2016	11:09	1260 Sir Johns Hill	4G/4B	X		X		X	
2/15/2016	11:10	1321 Sir Johns Hill	4G/4B	X		X		X	
2/15/2016	11:12	1320 Sir Johns Hill	3G/3B	X		X		X	
2/15/2016	11:15	1290 Old Rock Bridge	3G/3B	X		X		X	
2/15/2016	11:16	1291 Old Rock Bridge	3G/3B	X		X		X	
2/15/2016	11:21	1327 Lower Lake Ct.	3G/3B	X		X		X	
2/15/2016	11:22	1334 Old Rock Bridge	3G/3B	X		X		X	
2/15/2016	11:23	1335 Old Rock Bridge	3G/3B	X		X		X	
2/15/2016	11:24	1337 Old Rock Bridge	3G/3B	X		X		X	
2/15/2016	11:26	1361 Old Rock Bridge	3G/3B	X		X		X	
2/15/2016	11:27	1356 Old Rock Bridge	3G/3B	X		X		X	
2/15/2016	11:29	1320 Old Rock Bridge	3G/3B	X		X		X	
2/15/2016	11:30	1330 Old Rock Bridge	3G/3B	X		X		X	
2/15/2016	11:32	1301 Monroe	4G/3B	X		X		X	



**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Hills aka Lower Lake Estates

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/15/2016	11:33	1341 Monroe	4G/3B	X		X		X	
2/15/2016	11:35	1265 Monroe	4G/3B	X		X		X	
2/15/2016	11:37	1401 Old Rock Bridge	4G/3B	X		X		X	
2/15/2016	11:38	1380 Old Rock Bridge	4G/3B	X		X		X	
2/15/2016	11:40	Corner of Lower Lake Dr. and Old Rock Bridge	4G/3B	X		X		X	
2/15/2016	11:44	1290 Barrister Ct.	4G/3B	X		X		X	
2/15/2016	11:45	1320 Barrister Ct.	4G/3B	X		X		X	
2/15/2016	2:28	Corner of Luneman and Arrowbee	4G/3B	X		X		X	
2/15/2016	2:31	1601 Shadydale Ln.	4G/3B	X		X		X	
2/15/2016	2:33	1610 Shadydale Ln.	4G/3B	X		X		X	
2/15/2016	2:37	1641 Shadydale Ln.	4G/3B	X		X		X	
2/15/2016	2:39	4621 Luneman	3G/3B	X		X		X	
2/15/2016	2:40	4640 Luneman	3G/3B	X		X		X	
2/15/2016	2:41	4645 Luneman	3G/3B	X		X		X	
2/15/2016	2:43	1620 Red Fox	4G/5B	X		X		X	
2/15/2016	2:48	4540 Meadow Creek	4G/3B	X		X		X	
2/15/2016	2:49	4566 Meadow Creek	4G/3B	X		X		X	
2/15/2016	2:51	4640 Meadow Creek	4G/5B	X		X		X	
2/15/2016	2:52	4681 Meadow Creek	4G/5B	X		X		X	
2/15/2016	2:54	1721 Red Fox	4G/3B	X		X		X	

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Hills aka Lower Lake Estates

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/15/2016	2:56	1831 Red Fox	4G/3B	X		X		X	
2/15/2016	3:01	1541 Big Valley View	4G/3B	X		X		X	
2/15/2016	3:02	1552 Big Valley View	4G/3B	X		X		x	
2/15/2016	3:04	Corner of Pheasant and Luneman	4G/3B	X		X		x	
2/15/2016	3:11	1305 Tanglewood	4G/3B	X		X		X	
2/15/2016	3:12	Corner of Tanglewood and Joyous Ann	4G/3B	X		X		x	
2/15/2016	3:15	4870 Joyous Ann	4G/3B	X		X		X	
2/15/2016	3:17	1405 Tanglewood	3G/2B	X		X		X	
2/15/2016	3:19	1415 Tanglewood	3G/2B	X		X		X	
2/15/2016	3:22	Corner of Tanglewood and Bambi Lane	3G/2B	X		X		X	
2/15/2016	3:24	4756 Bambi Lane	3G/2B	X		X		X	
2/15/2016	3:26	4757 Bambi Lane	3G/2B	X		X		X	
2/15/2016	3:29	Corner of Jacarah and Tanglewood	3G/2B	X		X		X	

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Woods

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/17/2016	9:37	1380 & 1381 Barrister Ct.	3G/3B	X		X		X	
2/17/2016	9:41	Corner of Axel and Barrister	3G/3B	X		X		X	
2/17/2016	9:46	1320 & 1290 Axel	4G/3B	X		X		X	
2/17/2016	9:49	1220 Hidden Lake & Zorro Ct.	4G/3B	X		X		X	
2/17/2016	9:52	1341 Zorro Ct.	3G/3B	X		X		X	
2/17/2016	9:58	1400 & 1401 Cougar Track	4G/3B	X		X		X	
2/17/2016	9:59	1280 Winding Way	4G/3B	X		X		X	
2/17/2016	10:03	1431 Winding Way	4G/3B	X		X		X	
2/17/2016	10:06	1301 Twin Ct.	4G/3B	X		X		X	
2/17/2016	10:08	1247 Twin Ct.	4G/3B	X		X		X	
2/17/2016	10:11	1301 & 1303 Hidden Lake	4G/3B	X		X		X	
2/17/2016	10:16	1291 Hidden Lake Ct.	3G/3B	X		X		X	
2/17/2016	10:19	1370 Hidden Lake Ct.	3G/3B	X		X		X	
2/17/2016	10:21	1470 Hidden Lake Dr.	3G/4B	X		X		X	
2/17/2016	10:23	Corner of Hidden Lake Dr. and Lower Lake	4G/3B	X		X		X	
2/17/2016	10:25	1621 Rusty Nail Ln.	3G/3B	X		X		X	
2/17/2016	10:28	Corner of Lower Lake and Luneman	4G/3B	X		X		X	
2/17/2016	1:59	Corner of Luneman and Tango	4G/3B	X		X		X	
2/17/2016	2:06	4201 Acadian Ln.	4G/2B	X		X		X	
2/17/2016	2:09	1441 Golden Spur	4G/2B	X		X		X	

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Woods

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/17/2016	2:12	1474 Golden Spur	4G/3B	X		X		X	
2/17/2016	2:14	Corner of Golden Spur and Badger Hill	4G/3B	X		X		X	
2/17/2016	2:17	1440 & 1452 Badger Hill	4G/3B	X		X		X	
2/17/2016	2:22	1524 Quail Run	3G/4B	X		X		X	
2/17/2016	2:25	1450 Quail Run	3G/4B	X		X		X	
2/17/2016	2:28	Corner of Quail Run and Badger Hill	3G/4B	X		X		X	
2/17/2016	2:31	Corner of Luneman and Badger Hill	3G/4B	X		X		X	
2/17/2016	2:35	4161 Luneman	4G/3B	X		X		X	
2/17/2016	2:37	1620 & 1621 Pilgrim	4G/4B	X		X		X	
2/17/2016	2:39	Corner of Pilgrim, Luneman and Pimlico	4G/4B	X		X		X	
2/17/2016	2:44	2340 Pimlico	4G/5B	X		X		X	
2/17/2016	2:47	2180 & 2195 Pimlico	4G/4B	X		X		X	
2/17/2016	2:49	2081 Pimlico	4G/4B	X		X		X	
2/17/2016	2:52	4043 Luneman	4G/5B	X		X		X	
2/17/2016	2:58	1978 Coffey Ln.	4G/4B	X		X		X	
2/17/2016	3:01	Corner of E. El Largo, Coffey and W El Largo	4G/4B	X		X		X	
2/17/2016	3:04	Corner of E. El Largo and Shallow Creek	4G/4B	X		X		X	
2/17/2016	3:06	2100 Shallow Creek	4G/4B	X		X		X	
2/17/2016	3:10	831 & 815 E. El Largo	4G/4B	X		X		X	
2/17/2016	3:13	Corner of E. El Largo and Luneman	4G/4B	X		X		X	

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Woods

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/17/2016	3:16	3871 Luneman	4G/4B	X		X		X	
2/17/2016	3:22	1265 Sierra East Ct.	4G/4B	X		X		X	
2/17/2016	3:24	Corner of Sierra East Ct. and W. El Largo	4G/5B	X		X		X	
2/17/2016	3:29	Corner of Celestial and W. El Largo	4G/5B	X		X		X	
2/17/2016	3:32	Corner of W. El Largo and Luneman	4G/5B	X		X		X	
2/17/2016	3:35	Corner of Baldwin Dr. and Luneman	4G/5B	X		X		X	
2/17/2016	3:40	3520 Puma Crossing	4G/5B	X		X		X	
2/17/2016	3:42	1740 Puma Crossing	4G/5B	X		X		X	
2/17/2016	3:45	Corner of Puma Crossing and Luneman	4G/5B	X		X		X	
2/17/2016	3:48	3201 Swallow Ln.	4G/5B	X		X		X	
2/17/2016	3:51	Corner of Swallow Ln. and Luneman	4G/5B	X		X		X	
2/17/2016	3:55	3800 & 3801 Murphy Ranch	4G/5B	X		X		X	
2/17/2016	3:58	Corner of Murphy Ranch and Luneman	4G/3B	X		X		X	
2/17/2016	4:01	1 House at the top of Panter Hallow	4G/5B	X		X		X	
2/17/2016	4:03	Corner of Panter Hallow and Luneman	4G/3B	X		X		X	
2/17/2016	4:07	Corner of Jakes Eighty and Luneman	3G/3B	X		X		X	
2/17/2016	4:10	3261 & 3281 Luneman - - End of the road - 4 OLD SHACKS	No SERVICE						
2/17/2016	4:22	Corner of Lotus and Springvale	4G/3B	X		X		X	
2/17/2016	4:25	1781 Springvale	4G/3B	X		X		X	
2/17/2016	4:32	3758 Pleasant Ranch Rd.	4G/5B	X		X		X	

**Verizon Call Log**

Tester: Iona Merideth - Arrowbee Woods

Date	Time	Location	Service Level	Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/17/2016	4:35	3950 Pleasant Ranch Rd.	4G/5B	X		X		X	
2/17/2016	4:37	Corner of Pleasant Ranch Rd. and Oak Meadow	4G/5B	X		X		X	
2/17/2016	4:39	1700 & 1720 Pleasant Ranch Rd.	4G/5B	X		X		X	
2/17/2016	4:41	Corner of Pleasant Ranch Rd. and Springvale	4G/4B	X		X		X	
2/17/2016	4:43	Corner of Springvale and Circle A Ranch	4G/4B	X		X		X	
2/17/2016	4:47	End Lakeview Dr.	4G/3B	X		X		X	
2/17/2016	4:49	4001 Lakeview Dr.	4G/3B	X		X		X	
2/17/2016	4:53	End of Hillock Dr.	4G/5B	X		X		X	
2/17/2016	4:55	4281 Hillock Dr.	4G/5B	X		X		X	
2/17/2016	4:58	Corner of Hillock Dr. and Lakeview Dr.	4G/3B	X		X		X	
2/17/2016	5:01	3815 Lakeview Dr.	4G/3B	X		X		X	
2/17/2016	5:03	Corner of Springvale and Lakeview Dr.	4G/3B	X		X		X	
2/17/2016	5:06	1662 Springvale	4G/3B	X		X		X	
2/17/2016	5:09	4401 Rossler Rd.	3G/3B	X		X		X	
2/17/2016	5:12	4461 Rossler Rd.	3G/3B	X		X		X	
2/17/2016	5:14	1593 Springvale	3G/3B	X		X		X	
2/17/2016	5:16	Corner of Springvale and Luneman	4G/3B	X		X		X	

Verizon Call Log

Tester: *Stevens*

Date	Time	Location		Call		Text		Email	
				Success	Failure	Success	Failure	Success	Failure
2/15/16	11:30	Trails End / Shoreline Dr	46/3B	✓		✓		✓	
	11:44	1110 Trails End	46 3B	✓		✓		✓	
	11:47	1100 + 1102 Trails End	46 3B	✓		✓		✓	
	12:09	1079 Trail End	46 3B	✓		✓		✓	
	12:12	1070 Trail End	46/3B	✓		✓		✓	
	12:14	1020 Trail End	46/3B	✓		✓		✓	
	12:18	980 Trails End	46/3B	✓		✓		✓	
	12:24	2396 Marbro	46/4B	✓		✓		✓	
	12:27	2341 marbro	46/4B	✓		✓		✓	
	"	2340 marbro	46/4B	✓		✓		✓	
	12:35	Clark Mtn Rd + Pogo Lane	46/2B	✓		✓		✓	
	12:37	Clark Mtn Rd + Hallelujah	46/2B	✓		✓		✓	
	12:44	6250 Clark Mtn Rd	46/4B	✓		✓		✓	
	12:46	6345 Clark Mtn Rd	46/4B	✓		✓		✓	
	12:48	6240 Clark Mtn Rd	46/3B	✓		✓		✓	
	12:50	6181 Clark Mtn Rd	46/3B	✓		✓		✓	
	12:54	Wagner Mine / Unimtown Rd	46/2B	✓		✓		✓	
	12:56	4114 Unimtown Rd	46/4B	✓		✓		✓	
		and next door	"	✓					



Verizon Call Log

Tester: *Stevens*

Date	Time	Location	Call		Text		Email		
			Success	Failure	Success	Failure	Success	Failure	
2/15/16	1:00	4065 Krontown Rd	46/4B	✓		✓		✓	
	1:01	4020 Krontown Rd.	46/4B	✓		✓		✓	
	1:04	4001 & 4000 Krontown Rd	46/5B	✓		✓		✓	
	1:10	5220 Wagner Ed Mine Rd	46/3B	✓		✓		✓	
	1:15	6105 Clark Mtn Rd	46/3B	✓		✓		✓	
	1:19	6025 Clark Mtn Rd	46/3B	✓		✓		✓	
	1:22	5950 Clark Mtn Rd	46/2B	✓		✓		✓	
	1:26	6725 Gods Way	46/3B	✓		✓		✓	
	1:29	end of Gods Way	46/2B	✓		✓		✓	
	1:33	5715 Clark Mtn	46/3B	✓		✓		✓	
	1:37	5691 Clark Mtn	46/3B	✓		✓		✓	
	1:39	5601/5609 Peterson Lane	46/3B	✓		✓		✓	
	1:40	5606 Peterson Lane	46/3B	✓		✓		✓	
	1:43	5569 & 5560 Peterson Lane	46/3B	✓		✓		✓	
	1:45	5480 Peterson Lane	46/3B	✓		✓		✓	
	1:53	5660 Peterson Lane	46/3B	✓		✓		✓	
	1:55	5595 Basson <del>for</del> Road	46/4B	✓		✓		✓	
	1:57	El Camp & Bassi	46/4B	✓		✓		✓	
	2:11	5461 Basson Road	46/3B	✓		✓		✓	
	2:01	5500 Basson Road	46/3P						

Verizon Call Log

Tester: Stevens		Location		Call		Text		Email	
Date	Time	Location	Time	Success	Failure	Success	Failure	Success	Failure
2/15/16	2:03	5446/5446 Brassi Rd	46/3B	✓		✓		✓	
	2:06	5300 Brassi Rd	46/4B	✓		✓		✓	
	2:11	5200/5166 Brassi Rd	46/3B	✓		✓		✓	
	2:10	5211/5215 Brassi Road	46/3B	✓		✓		✓	
	2:13	The River Stone, Lotus Rd	46/3B	✓		✓		✓	
	2:16	1031 Lotus Rd ~ 1026 Lotus Rd	46/3B	✓		✓		✓	
	2:19	1006 Lotus Rd	46/4B	✓		✓		✓	
	2:21	5122 Firehouse Rd (Fire Station)	46/4B	✓		✓		✓	
	2:22	Lotus Stone Lotus Rd	46/5B	✓		✓		✓	
	2:25	Herrington Park Lotus Rd	46/5B	✓		✓		✓	
	2:29	Park Playground	46/4B	✓		✓		✓	
	2:32	Stone House Lotus/Hwy 49	46/4B	✓		✓		✓	
	2:35	7291 Hwy 49	46/3B	✓		✓		✓	
	2:38	Chevron Hwy 49/Manickel Gule	46/4B	✓		✓		✓	
	2:42	7170 Hwy 49	46/3B	✓		✓		✓	
	2:58	Lotus Post Office -	46/3B	✓		✓		✓	
	3:04	1066 Lotus Rd ~ <del>1052</del>	46/4B	✓		✓		✓	
	3:05	1052 Lotus Rd	46/3B	✓		✓		✓	
	3:08	5041 Mountain View Dr	46/3B	✓		✓		✓	
	3:15	4710 Mountain View	46/3B	✓		✓		✓	



# EXHIBIT C

# Check your coverage

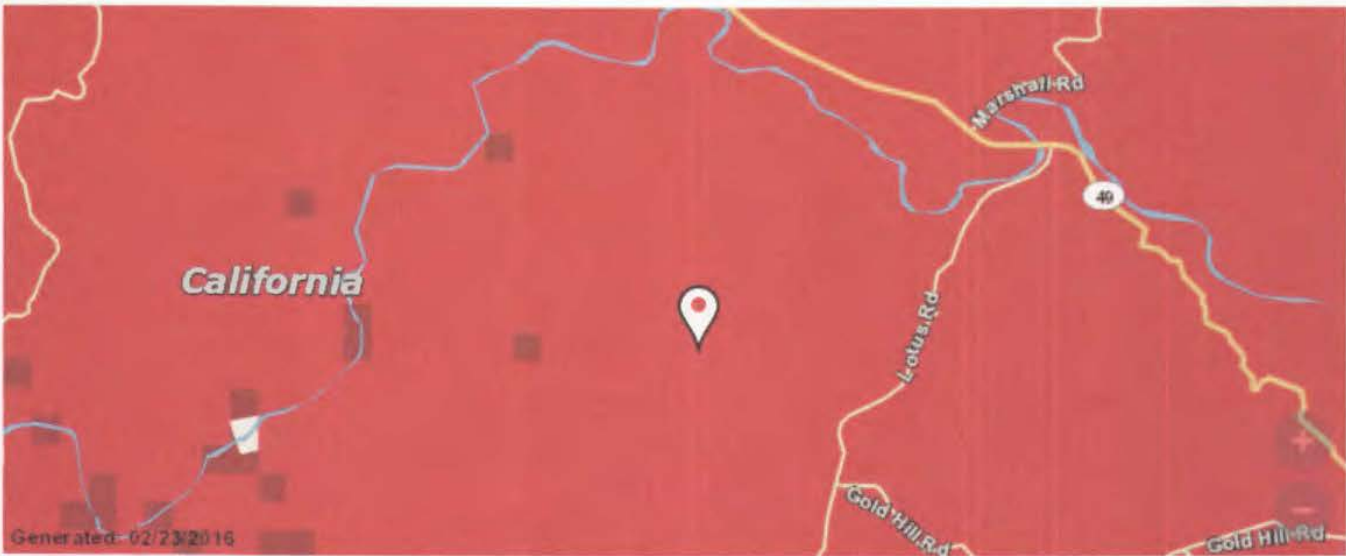
International Coverage

See detailed information about coverage in your area by searching this map.

1108 Shoreline Drive, Placerville, CA



- 4G LTE Data Coverage ?
- Data Coverage ?
- Voice & Messaging ?
- Prepaid ?
- Push to Talk ?



These Coverage Locator depictions apply to the following calling plans: National Calling Plans, Mobile Broadband and Prepaid.

International rates for voice and data will apply.

These maps are not a guarantee of coverage and contain areas of no service, and are a general prediction of where rates apply based on our internal data. Wireless service is subject to network and transmission limitations, including cell site unavailability, particularly near boundaries and in remote areas. Customer equipment, weather, topography and other environmental considerations associated with radio technology also affect service and service may vary significantly within buildings. Some information on service outside the Verizon Wireless proprietary network, and we can not vouch for its accuracy.

# Check your coverage

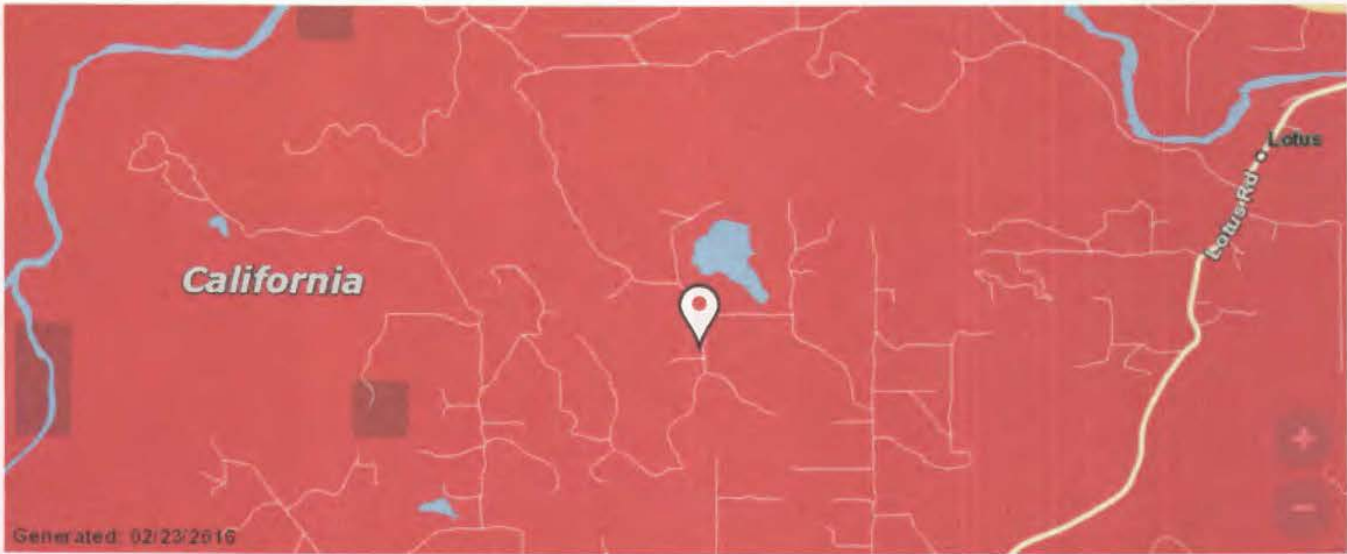
International Coverage

See detailed information about coverage in your area by searching this map.

1108 Shoreline Drive, Placerville, CA



- 4G LTE Data Coverage ?
- Data Coverage ?
- Voice & Messaging ?
- Prepaid ?
- Push to Talk ?



- Verizon 4G LTE
- Verizon 3G
- Extended 3G
- International 4G
- International 3G
- No Coverage
- VZW Store

These Coverage Locator depictions apply to the following calling plans: National Calling Plans, Mobile Broadband and Prepaid.

International rates for voice and data will apply.

These maps are not a guarantee of coverage and contain areas of no service, and are a general prediction of where rates apply based on our internal data. Wireless service is subject to network and transmission limitations, including cell site unavailability, particularly near boundaries and in remote areas. Customer equipment, weather, topography and other environmental considerations associated with radio technology also affect service and service may vary significantly within buildings. Some information on service outside the Verizon Wireless proprietary network, and we can not vouch for its accuracy.

# EXHIBIT D



January 18, 2016

Eldorado County Planning Commission  
Rich Stewart, Chair, District 1  
Dave Pratt, Vice-Chair, District 4  
Brian Shinault, Second Vice-Chair, District 5  
Gary Miller, District 2  
Tom Heflin, District 3  
Michael Ranalli, District 4  
Roger Trout, Executive Secretary

16 JAN 22 AM 11:46  
RECEIVED  
PLANNING DEPARTMENT

RE: S15-0004 Arrowbee Lake Verizon Cell Tower

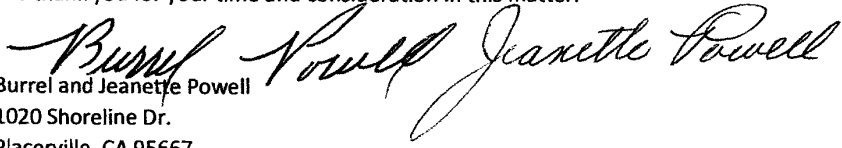
Dear Commissioners, Supervisor, & Executive Secretary,

We are residents of Arrowbee Ranch Estates and have recently learned that Verizon has applied for a Special Use Permit to construct a 90 foot monopine cell tower near Lake Arrowbee. While we do understand the desire for better cell service, the placement of the tower would negatively impact our residential community and we encourage you to deny application for the special use permit.

Lake Arrowbee is a rain and spring fed lake that is the center for many of our individual and community activities. Grandparents and parents push babies in strollers on our roads. Individuals walk for the paper or take their dogs for a walk on our roads daily. We do not have sidewalks. The Lake is a huge attraction all year with families and young people walking or driving the roads to visit the lake, to swim, fish or enjoy the beauty. While Arrowbee Rd. is two lane, Shoreline is a one lane road with steep drop offs in places as you near the tower area. A friend coming to visit us backed off the road into the ditch while trying to make room for an oncoming car. The road leading to the tower area is fragile and narrow. We understand that Verizon can sell space on their tower to other communication companies, further increasing the traffic. Trucks for construction and maintenance will increase traffic and be detrimental to our fragile roads and to the safety of all who live and play in our community. We are not a commercial area. We are a residential community with children and people of all ages walking and riding our narrow road.

Further the 90 foot monopine cell tower is not consistent with our foothill oak environment. The sheer size and visibility from so many locations will be devastating to the aesthetic character of our residential neighborhood. Please deny this application and advise Verizon to look for other, more suitable non-residential sites.

We thank you for your time and consideration in this matter.

  
Burrel and Jeanette Powell  
1020 Shoreline Dr.  
Placerville, CA 95667

16-0041 Public Comment  
PC Rcvd 01-11-16 to 01-22-16

16-0041 Public Comment  
PC Rcvd 02-23-16

PC 02-25-16  
#4

*El Dorado County Planning Commission*  
Rich Stewart, Chair, District 1  
Dave Pratt, Vice-Chair, District 4  
Brian Shinault, Second Vice-Chair, District 5  
Gary Miller, District 2  
Tom Heflin, District 3

16 FEB -4 PM 1:02  
RECEIVED  
PLANNING DEPARTMENT

RE: S15-0004 Arrowbee Lake Verizon Cell Tower

Dear Commissioners,

February 1, 2016

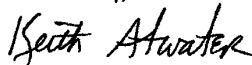
My family and I are *very* disturbed by the possibility of a 90-foot cell tower being installed on a prominent hill very close to our private community park and lake. This unsightly and obviously artificial "evergreen tree" amid our lovely oak trees and rolling hills will be visible to everyone using the park, lake, beach, road, and dog walk areas. It is an ugly blight on our landscape – the very landscape (Arrowbee Lake / FCLOA community) we moved to especially because it *has* this lake, these hills, and homes on quiet, expansive acreage. All families fishing, picnicking, walking, and enjoying nature here will be subjected to the intrusive sight (and occasional diesel engine testing) sounds of this tower for as long as they (we!) live here. This degrades our quality of life in significant negative ways.

You need to know that we are a community of well over one hundred homeowners who pay annual dues to enjoy well-maintained roads, lake access, dam inspection, and park upkeep. We had no idea that one homeowner (an un-communicative community member who did not communicate anything about this possibility) is planning to rent / lease a portion of their property in this very visible area for a tower, cement pad base, emergency diesel generator, and rights to access to this hillside not far from our jointly-owned and maintained lake for regular maintenance by noisy, heavy vehicles.

In addition, anyone who has driven the back roads of our area can point to any number of prominent hilltops that a tower could be erected on the that would affect few, if any residents (excluding grazing cattle). You must also be made aware of the fact that adequate cell phone coverage *does* currently exist in a broad area for miles around our community.

I urge you all to support our rural, neighborly, scenic community of family homes and deny this special use permit.

Most sincerely,



24 year resident

Parent, teacher, homeowner

16-0041 Public Comment  
PC Rcvd 02-03-16 to 02-09-16

16-0041 Public Comment  
PC Rcvd 02-23-16

14 February 2016

County of El Dorado Planning Commission  
2850 Fairlane Court, Placerville, CA 95667

Attention: Commissioners Heflin, Stewart, Miller, Prattand and Shinaut

Dear Commissioners:

We are writing to you in opposition to the proposed staff recommended approval of the Special Use Permit S15-0004; File no. 16-0041.

As a long time resident of Arrowbee Estates and a Real Estate of long standing in the community for over 35 years, the issue of granting this Cell Tower in the middle of the view shed of Arrowbee Lake is totally unacceptable and at odds with many studies and market reports showing loss of property values as the result of such granting.

I am enclosing two such reports - one entitled "Burbank Action (Against Cell Towers in Our Neighborhood)" and the other an article "A Pushback Against Cell Towers" that appeared in The New York Times.

As this Permit is for granting a variance for business uses and profit, I find this to be a grave impact on the many surrounding properties whose values will be negatively affected and not in compliance with both the zoning and rural nature of our area. In addition, there will be a hardship on our area in maintaining values in the neighborhood. I would expect the over 40 property owners to immediately request a reduction in their property tax bases as well as the total negative feeling for neighbors who would disregard their impact by allowing this venture on their property.

We all would like this issue considered as a highly negative act and affront to the idea of maintaining and appreciating view sheds and a responsibility of maintaining uses that comply with the nature and specifics of current zoning. We therefore ask that the Commission deny the request for this variance.

Leslie and Charles Hill

1445 Arrowbee Dr., Placerville, CA

cc: Board of Supervisors Member Dist. 4 Michael Ranalli

16-0041 Public Comment  
PC Rcvd 02-11-16 to 02-19-16

16-0041 Public Comment  
PC Rcvd 02-23-16

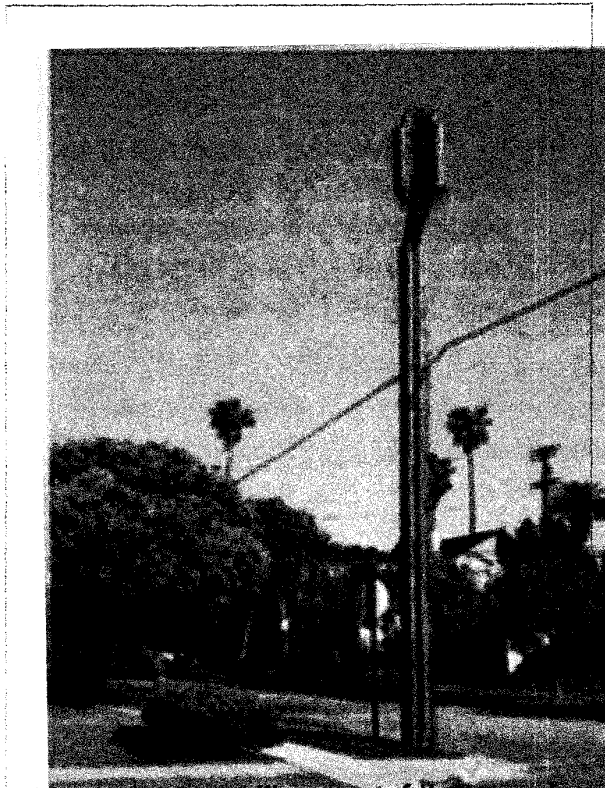
# Burbank ACTION (Against Cell Towers In Our Neighborhood)

[Home](#) >

## DECREASED REAL ESTATE VALUE

*Note: This page is best viewed using [Mozilla Firefox](#) internet browser.*

*For residents in other communities opposing proposed wireless facilities in your neighborhood: in addition to the real estate studies you send and share with your local officials, talk to your local real estate professionals and inform and educate them about the negative effects on local property values that cell towers have, and ask them to submit letters of support to city officials, or have them sign a petition that will be forwarded onto your city officials. See*



How would you like one of these ugly monsters installed on the sidewalk next to your home? This one was installed in a public right of way (PROW, aka sidewalk) on Via De La Paz in beautiful Pacific Palisades, because the City of Los Angeles currently lacks rigorous regulations concerning proposed PROW wireless installations. Why isn't the Los Angeles City Council and Attorney updating the city's ordinance like residents are asking? Photo courtesy Pacific Palisades Residents

### Menu

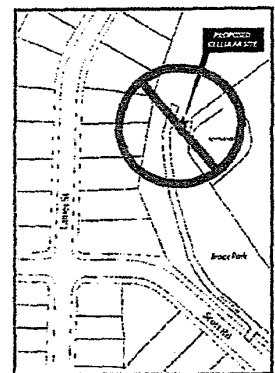
**Burbank residents: Sign our Petition now, "Burbank Residents Oppose Smart Meters":**  
<http://burbankaction.wordpress.com>

**Visit our Burbank ACTION blog:**  
<http://burbankaction.wordpress.com>

**Calendar - upcoming events:**  
<http://burbankaction.wordpress.com>

**Go to our "Smart Meter Concerns" Section:**  
<https://sites.google.com/site/smart-meter-concerns>

**Join our facebook page - network, share and post info that's going on in your community, inform and help other communities**



*Click below for more*

Public Comment  
PC Rcvd 02-11-16 to 02-19-16

examples below. Association, <http://pprainc.org/>

*It's very*

*important to have your local real estate professionals back up what the experts report in their studies to make your arguments real and relative to your specific community. You can also educate your local homeowners associations and neighborhood councils about the negative property value effects and have them submit letters and sign petitions, too. Check out the other pages on this website (click links in right column) for other helpful information.*

Residents are justifiably concerned about proposed cell towers reducing the value of their homes and properties. Who would want to live right next to one, or under one? And imagine what it's like for people who purchase or build their dream home or neighborhood, only to later have an unwanted cell tower installed just outside their window?

This negative effect can also contribute to urban blight, and a deterioration of neighborhoods and school districts when residents want to move out or pull their children out because they don't want to live or have their children attend schools next to a cell tower.

People don't want to live next to one not just because of health concerns, but also due to aesthetics and public safety reasons, i.e., cell towers become eyesores, obstructing or tarnishing cherished views, and also can attract crime, are potential noise nuisances, and fire and fall hazards.

These points underscore why wireless facilities are commercial facilities that don't belong in residential areas, parks and schools, and find out why they should be placed in alternative, less obtrusive locations. In addition, your city officials have the power to regulate the placement and appearance of cell towers, as long as such discrimination is not unreasonable, and especially if you show them that you already have coverage in your area.

As mentioned on our Home Page, putting cell towers near residential properties is just bad business. For residential owners, it means decreased property values. For local businesses (realtors and brokers) representing and listing these properties, it will create decreased income. And for city governments, it results in decreased revenue (property

## **Burbank UPDATES:**

- **June 3-17, 2011:**  
City of Burbank Planning & Transportation Division issues its draft updated wireless facility ordinance — it fails to protect our residential areas — go here to read how you can help: <https://sites.google.com/17-2011-resident-respons-comments-to-proposed-wtf-ordinance-update>
- Read Burbank ACTION resident response to proposed Draft Update of our Wireless Telecommunications Facility Ordinance [here](#).
- Please go [here](#) for our list of "Top 20" Resident Recommendations — thanks to residents who have e-mailed these to our city officials. To read about the Dec. 1, 2010 Community Meeting, click the item under "Burbank UPDATES" in the column to your right.
- Dec. 1, 2010:  
Community Meeting
- August 31, 2010:  
City Council Meeting - Interim Regulations Approved
- July 26, 2010:  
Planning Board Meeting - Interim Regulations Approved
- June 14, 2010 Study

16-0041 Public Comment

taxes).

Read this New York Times news story, "A Pushback Against Cell Towers," published in the paper's Real Estate section, on August 27, 2010:

[http://www.nytimes.com/2010/08/29/realestate/29Lizo.html?\\_r=1&ref=realestate](http://www.nytimes.com/2010/08/29/realestate/29Lizo.html?_r=1&ref=realestate).

A number of organizations and studies have documented the detrimental effects of cell towers on property values.

1. The Appraisal Institute, the largest global professional membership organization for appraisers with 91 chapters throughout the world, spotlighted the issue of cell towers and the fair market value of a home and educated its members that a cell tower should, in fact, cause a decrease in home value.

The definitive work on this subject was done by Dr. Sandy Bond, who concluded that "media attention to the potential health hazards of [cellular phone towers and antennas] has spread concerns among the public, resulting in increased resistance" to sites near those towers. Percentage decreases mentioned in the study range from 2 to 20% with the percentage moving toward the higher range the closer the property. These are a few of her studies:

a. "The effect of distance to cell phone towers on house prices" by Sandy Bond, Appraisal Journal, Fall 2007, see attached. Source, Appraisal Journal, found on the Entrepreneur website, <http://www.entrepreneur.com/tradejournals/article> or [http://www.prrs.net/papers/Bond\\_Squires\\_Using](http://www.prrs.net/papers/Bond_Squires_Using)

b. Sandy Bond, Ph.D., Ko-Kang Wang, "The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods," The Appraisal Journal, Summer 2005; see attached. Source: Goliath business content website, [http://goliath.ecnext.com/coms2/gi\\_0199-5011857/The-impact-of-cell-phone.html](http://goliath.ecnext.com/coms2/gi_0199-5011857/The-impact-of-cell-phone.html)

c. Sandy Bond also co-authored, "Cellular Phone Towers: Perceived impact on residents and

Session and Upcoming TBD Community Meeting

- Dec. 8, 2009 Study Session & City Hall Meetings
- Nov. 16, 2009 Planning Board and Nov. 17 City Hall Meetings
- November 12, 2009 Public Meeting

**City of Burbank website: Wireless ordinance updates**

**Burbank Leader Newspaper Stories and Editorials**

**Tools: Reasons To Deny A Proposed Cell Tower and/or push for stronger regulations:**

- Reasonable Discrimination Allowed
- Decrease In Property Value
- We Already Have Good Coverage: Significant Gap and 911
- Alternative Locations and Supplemental Application forms
- Aesthetics and Public Safety

16-0041 Public Comment

property values" University of Auckland, paper presented at the Ninth Pacific-Rim Real Estate Society Conference, Brisbane, Australia, January 19-22, 2003; see attached. Source: Pacific Rim Real Estate Society website, [http://www.prrs.net/Papers/Bond The Impact](http://www.prrs.net/Papers/Bond%20The%20Impact%20of%20Cell%20Towers%20on%20Property%20Values.pdf)

2. Industry Canada (Canadian government department promoting Canadian economy), "Report On the National Antenna Tower Policy Review, Section D – The Six Policy Questions, Question 6. What evidence exists that property values are impacted by the placement of antenna towers?"; see attached. Source: Industry Canada <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf08353.html> website,

3. New Zealand Ministry for the Environment, "Appendix 5: The Impact of Cellphone Towers on Property Values"; see attached. Source: New Zealand Ministry for the Environment website, <http://www.mfe.govt.nz/publications/rma/nes-telecommunications-section32-aug08/html/page12.html>

On a local level, residents and real estate professionals have also informed city officials about the detrimental effects of cell towers on home property values.

1. **Glendale, CA:** During the January 7, 2009 Glendale City Council public hearing about a proposed T-mobile cell tower in a residential neighborhood, local real estate professional Addora Beall described how a Spanish home in the Verdugo Woodlands, listed for 1 million dollars, sold \$25,000 less because of a power pole across the street. "Perception is everything," said Ms. Beall stated. "It the public perceives it to be a problem, then it is a problem. It really does affect property values." See Glendale City Council meeting, January 7, 2009, video of Addora Beall comments @ 2:35:24: [http://glendale.granicus.com/MediaPlayer.php?view\\_id=12&clip\\_id=1227](http://glendale.granicus.com/MediaPlayer.php?view_id=12&clip_id=1227)

2. **Windsor Hills/View Park, CA:** residents who were fighting off a T-Mobile antenna in their neighborhood

- Public Right of Way Developments
- Noise and Nuisance and notes about Clearwire
- Health Effects: Science & Research
- Watch these videos - Glendale and other residents protest cell towers and ask for new ordinances - great examples: read, watch and learn how these residents and other local groups organized their effective presentations before their elected reps. What they did will inspire and may help you.

**DVDs and Books:**  
you can view and read

**Take Action:**

Read and Sign the Petition

Write and Call Our City

16-0041 Public Comment

PC Rcvd 02-11-16 to 02-19-16

4/10



received letters from real estate companies, homeowner associations and resident organizations in their community confirming that real estate values would decrease with a cell phone antenna in their neighborhood. To see copies of their letters to city officials, look at the . Report from Los Angeles County Regional Planning Commission regarding CUP Case No. 200700020-(2), from L.A. County Board of Supervisors September 16, 2009, Meeting documents, Los Angeles County website, here at:

<http://file.lacounty.gov/bos/supdocs/48444.pdf>

a. See page 295, August 31, 2008 Letter from Donna Bohanna, President/Realtor of Solstice International Realty and resident of Baldwin Hills to Los Angeles Board of Supervisors explaining negative effect of cell tower on property values of surrounding properties. "As a realtor, I must disclose to potential buyers where there are any cell towers nearby. I have found in my own experience that there is a very real stigma and cellular facilities near homes are perceived as undesirable."

b. See page 296, March 26, 2008 Letter from real estate professional Beverly Clark, "Those who would otherwise purchase a home, now considered desirable, can be deterred by a facility like the one proposed and this significantly reduces sales prices and does so immediately...I believe a facility such as the one proposed will diminish the buyer pool, significantly reduce homes sales prices, alter the character of the surrounding area and impair the use of the residential properties for their primary uses."

c. See Page 298, The Appraiser Squad Comment Addendum, about the reduced value of a home of resident directly behind the proposed installation after the city had approved the CUP for a wireless facility there: "The property owner has listed the property...and has had a potential buyer back out of the deal once this particular information of the satellite communication center was announced....there has been a canceled potential sale therefore it is relevant and determined that this new planning decision can have some negative effect on

[Leaders](#)

**Other Links:**

- [Actions Taken](#)
- [Other Communities Saying "No"](#)
- [Important Organizations](#)
- [Burbank Neighborhoods & Districts](#)

[Search for Antennae in Your Area](#)

[Website Contact Info](#)

[Home](#)

the subject property.”

d. See Page 301, PowerPower presentation by residents about real estate values: “The California Association of Realtors maintains that ‘sellers and licensees must disclose material facts that affect the value or desirability of the property,’ including ‘known conditions outside of and surrounding’ it. This includes ‘nuisances’ and zoning changes that allow for commercial uses.”

e. See Pages 302-305 from the Baldwin Hills Estates Homeowners Association, the United Homeowners Association, and the Windsor Hills Block Club, opposing the proposed cell tower and addressing the effects on homes there: “Many residents are prepared to sell in an already depressed market or, in the case of one new resident with little to no equity, simply walk away if these antennas are installed.

f. See Pages 362-363, September 17, 2008, Letter from resident Sally Hampton, of the Windsor Hills Homeowner’s Assoc., Item K, addressing effects of the proposed facility on real estate values.

3. **Santa Cruz, CA:** Also attached is a story about how a preschool closed up because of a cell tower installed on its grounds; “Santa Cruz Preschool Closes Citing Cell Tower Radiation,” Santa Cruz Sentinel, May 17, 2006; Source, EMFacts website: <http://www.emfacts.com/weblog/?p=466>.

4. **Merrick, NY:** For a graphic illustration of what we don’t want happening here in Burbank, just look at Merrick, NY, where NextG wireless facilities are being installed, resulting in declining home real estate values. Look at this Best Buyers Brokers Realty website ad from this area, “Residents of Merrick, Seaford and Wantaugh Complain Over Perceived Declining Property Values: <http://www.bestbuyerbroker.com/blog/?p=86>.

5. **Burbank, CA:** As for Burbank, at a City Council public hearing on December 8, 2009, hillside resident and a California licensed real estate professional Alex Safarian

informed city officials that local real estate professionals he spoke with agree about the adverse effects the proposed cell tower would have on property values:

"I've done research on the subject and as well as spoken to many real estate professionals in the area, and they all agree that there's no doubt that cell towers negatively affect real estate values. Steve Hovakimian, a resident near Brace park, and a California real estate broker, and the publisher of "Home by Design" monthly real estate magazine, stated that he has seen properties near cell towers lose up to 10% of their value due to proximity of the cell tower...So even if they try to disguise them as tacky fake metal pine trees, as a real estate professional you're required by the California Association of Realtors: that sellers and licensees must disclose material facts that affect the value or desirability of a property including conditions that are known outside and surrounding areas."

(See City of Burbank Website, Video, Alex Safarian comments @ 6:24:28,  
[http://burbank.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=848](http://burbank.granicus.com/MediaPlayer.php?view_id=6&clip_id=848))

Indeed, 27 Burbank real estate professionals in December 2009, signed a petition/statement offering their professional opinion that the proposed T-Mobile cell tower at Brace Canyon Park would negatively impact the surrounding homes, stating:

"It is our professional opinion that cell towers decrease the value of homes in the area tremendously. Peer reviewed research also concurs that cell sites do indeed cause a decrease in home value. We encourage you to respect the wishes of the residents and deny the proposed T-Mobile lease at this location. We also request that you strengthen your zoning ordinance regarding wireless facilities like the neighboring city of Glendale has done, to create preferred and non preferred zones that will protect the welfare of our residents and their properties as well as Burbank's real estate business professionals and the City of Burbank. Higher property values mean more tax revenue for the city, which helps improve our city." (Submitted to City 0041

Council, Planning Board, City Manager, City Clerk and other city officials via e-mail on June 18, 2010. To see a copy of this, scroll down to bottom of page and click "Subpages" or go here:

<http://sites.google.com/site/nocelltowerinourneighborhood/real-estate-value/burbank-real-estate-professionals-statement> )

Here is a list of additional articles on how cell towers negatively affect the property values of homes near them:

- The Observer (U.K.), "Phone masts blight house sales: Health fears are alarming buyers as masts spread across Britain to meet rising demand for mobiles," Sunday May 25, 2003 or go here: <http://www.guardian.co.uk/money/2003/may/25/house>
- "Cell Towers Are Sprouting in Unlikely Places," The New York Times, January 9, 2000 (fears that property values could drop between 5 and 40 percent because of neighboring cell towers)
- "Quarrel over Phone Tower Now Court's Call," Chicago Tribune, January 18, 2000 (fear of lowered property values due to cell tower)
- "The Future is Here, and It's Ugly: a Spreading of Techno-blight of Wires, Cables and Towers Sparks a Revolt," New York Times, September 7, 2000
- "Tower Opponents Ring Up a Victory," by Phil Brozynski, in the *Barrington [Illinois] Courier-Review*, February 15, 1999, 5, reporting how the Cuba Township assessor reduced the value of twelve homes following the construction of a cell tower in Lake County, IL. See attached story: <http://spot.colorado.edu/~maziara/appeal&attachments/43-LoweredPropertyValuation/>
- In another case, a Houston jury awarded 1.2 million to a couple because a 100-foot-tall cell tower was determined to have lessened the value of their property and caused them mental anguish: Nissimov, R., "GTE Wireless Loses Lawsuit over Cell-Phone Tower," Houston Chronicle, February 23, 1999, Section A, page

16-0041 Public Comment

PC Rcvd 02-11-16 to 02-19-16

8/10

11. (Property values depreciate by about 10 percent because of the tower.)

Read about other "Tools" on our website that may help you and your fellow residents oppose a cell tower in your neighborhood in the column to the right. These include:

- [Reasonable Discrimination Allowed](#)
- [We Already Have Good Coverage: Significant Gap and 911](#)
- [Alternative Locations and Supplemental Application forms](#)
- [Aesthetics and Safety](#)
- [Noise and Nuisance and notes about Clearwire](#)
- [Health Effects: Science & Research](#)

Also print out this helpful article on court decisions from the communications law firm of Miller & Van Eaton (with offices in D.C. and San Francisco) that you can pull and read to realize what rights you may or may not have in opposing a wireless facility in your neighborhood:

[http://www.millervaneaton.com/content.agent?page\\_name=HT%3A++IMLA+Article+Tower+Siting+Nov+2016](http://www.millervaneaton.com/content.agent?page_name=HT%3A++IMLA+Article+Tower+Siting+Nov+2016)  
(click the link once you get to this page).

Other important decisions and actions taken by courts and local governments can be found in our [Actions Taken page](#).

Watch [how other resident groups](#) organized effective presentations at their public hearings so you can pick up their techniques and methods.

You can read and find additional organizations and resident groups that have organized opposition efforts against cell towers and wireless facilities, on our [Other Communities Saying "No"](#) and [Important Organizations](#) pages.

Subpages (1): [Burbank Real Estate Professionals Statement](#)

## Comments

16-0041 Public Comment  
PC Rcvd 02-11-16 to 02-19-16

2/16



The New York Times

REAL ESTATE | IN THE REGION | LONG ISLAND

# A Pushback Against Cell Towers

By MARCELLE S. FISCHLER AUG. 27, 2010

Wantagh

TINA CANARIS, an associate broker and a co-owner of RE/MAX Hearthstone in Merrick, has a \$999,000 listing for a high ranch on the water in South Merrick, one of a handful of homes on the block on the market. But her listing has what some consider a disadvantage: a cell antenna poking from the top of a telephone pole at the front of the 65-by-100-foot lot.

“Even houses where there are transformers in front” make “people shy away,” Ms. Canaris said. “If they have the opportunity to buy another home, they do.”

She said cell antennas and towers near homes affected property values, adding, “You can see a buyer’s dismay over the sight of a cell tower near a home just by their expression, even if they don’t say anything.”

By blocking, or seeking to block, cell towers and antennas over the course of the last year, Island homeowners have given voice to concerns that proximity to a monopole or antenna may not be just aesthetically displeasing but also harmful to property values. Many also perceive health risks in proximity to radio frequency radiation emissions, despite industry assertions and other evidence disputing that such emissions pose a hazard.

Emotions are running so high in areas like Wantagh, where an application for six cell antennas on the Farmingdale Wantagh Jewish Center is pending, that the Town of Hempstead imposed a moratorium on applications until Sept. 21. That is the date for a public hearing on a new town ordinance stiffening requirements.

At a community meeting on Aug. 16 at Wantagh High School, Dave Denenberg, the Nassau county legislator for Bellmore, Wantagh and Merrick, told more than 200 residents that 160 cell antennas had been placed on telephone poles in the area in the last year by NextG, a wireless network provider.

“Everyone has a cellphone,” Mr. Denenberg said, “but that doesn’t mean you have to have cell installations right across the street from your house.” Under the old town code, installations over 30 feet high required an exemption or a variance. But in New York, wireless providers have public utility status, like LIPA and Cablevision, and they can bypass zoning boards.

Earlier this month in South Huntington, T-Mobile was ordered to take down a new 100-foot monotower erected on property deemed environmentally sensitive (and thus requiring a variance). Andrew J. Campanelli, a civil rights lawyer in Garden City, said a group of residents had hired him to oppose the cellular company’s application.

“They were worried about the property values,” Mr. Campanelli said. “If your home is near a cell antenna, the value of your property is going down at least 4 percent. Depending on the size of the tower and the proximity, it is going down 10 percent.”

In January, in an effort to dismantle 50 cell antennas on a water tower across from a school in the village of Bayville, Mr. Campanelli filed a federal lawsuit that cited health risks and private property rights.

In a statement, Dr. Anna F. Hunderfund, the Locust Valley



superintendent, said that in February 2009 the district had engaged a firm to study the cellphone installations near the Bayville schools, finding that the tower “posed no significant health risks,” and she noted that the emission levels fell well below amounts deemed unsafe by the Federal Communications Commission.

In June 2009, Sharon Curry, a psychologist in Merrick, woke up to find a cell antenna abutting her backyard, level to her 8-year-old son’s bedroom window.

Puzzled by its presence, particularly because she lives next to an elementary school, she did research to see if there was cause for concern. What she learned about possible health impacts, she said, led her to seek help from civic associations and to form a group, Moms of Merrick Speak Out, to keep new cell towers out. She said she was seeking the “responsible” placement of cell antennas, away from homes and schools.

The Federal Communications Act of 1996 says health concerns are not a valid reason for a municipality to deny zoning for a cell tower or antenna. Property values and aesthetics, however, do qualify, according to the act.

Frank Schilero, an associate broker with RE/MAX Innovations in Wantagh, has a listing on a \$629,000 home down the street from the Farmingdale Wantagh Jewish Center, where the application is pending to put six cell antennas on the roof.

“People don’t like living next to cell towers, for medical reasons or aesthetics,” Mr. Schilero said. “Or they don’t want that eyesore sticking up in their backyards.” There is an offer on his listing, he added, but since the buyer heard about the possible cell antennas she has sought more information from the wireless companies about their size and impact.

Charles Kovit, the Hempstead deputy town attorney, said that under the proposed code change any new towers or antennas would have to be 1,500 feet

from residences, schools, houses of worship and libraries.

The town recently hired a consultant, Richard A. Comi of the Center for Municipal Solutions in Glenmont, to review antenna applications.

Under the new ordinance, applications for wireless facilities would require technical evidence that they had a “gap” in coverage necessitating a new tower.

“If not, they will get denied,” Mr. Kovit said. The wireless companies would also have to prove that the selected location had “the least negative impact on area character and property values.” If another location farther away from homes can solve the gap problem, “they are going to have to move.”

A version of this article appears in print on August 29, 2010, on page RE9 of the New York edition with the headline: A Pushback Against Cell Towers.

---

© 2016 The New York Times Company

PC 2/25/16  
#4

1020 Trails End Drive  
Placerville, CA 95667  
(Arrowbee Ranch Estates)

16 FEB 16 AM 9:13  
RECEIVED  
PLANNING DEPARTMENT

15 February 2016

Community Development Agency  
2850 Fairlane Court  
Placerville, CA 95667



Dear Sir or Madam:

I am a property owner in Arrowbee Ranch Estates. I have lived here for 28 years. Having moved here to enjoy the rural ambiance of the area, I am deeply disturbed by the proposal to build a Cell Tower near Arrowbee Lake.

The tower will negatively impact the scenic beauty of the area as well as generating 80-90 decibels of noise around the clock. Both of these features of the tower will lessen my daily enjoyment of my home. It will lower my quality of life. Additionally, the tower will devalue my property in the eventual event of its sale. The visual eyesore and the continual generation of noise will not be a draw for potential buyers. All of the property values of homeowners in this area will decline.

I also own an undeveloped property (1056 Trails End Drive) in Arrowbee Ranch Estates. It is my retirement investment, if you will. This property will be in direct line-of-sight of the tower and will be the recipient of the constant background noise. The proposed tower will devalue this investment in my future.

I am a registered voter and have participated in every election since I was eligible to vote. I am aware of the elected status of some of the people involved in the approval process. I will actively monitor the voting record of those individuals involved in this Cell Tower proposal and vocally support those who object to this installation and actively oppose those who support it. This Cell Tower will harm all of the residents of this area in one manner or another: visually, audibly, financially or physical health.

**I am opposed to the installation of the Cell Tower in Arrowbee Ranch Estates.**

Sincerely,

Roger Keenan

February 19, 2016

***El Dorado County Planning Commission***

**Rich Stewart, Chair, District 1**

**Gary Miller, First Vice Chair, District 2**

**Brian Shinault, Second Vice-Chair, District 5**

**James Williams, District 4**

**Jeff Hansen, District 3**

**RE: S15-0004 Arrowbee Lake Verizon Cell Tower**

**Dear Commissioners,**

**We are Chuck and Linda Stevens and we've lived on and improved our property on Trails End Court for eighteen years. We are now retired and at last able to fully enjoy our property and the surrounding neighborhood. We have reviewed the plans and visual simulations for the proposed 90 foot cell tower and are writing to convey our strong opposition to building this tower in our neighborhood. We can see the lake and a glimpse of the Sierras from the front part of our property; now we will also be forced to look at a 90 foot cell tower on top of an ugly base structure.**

**The presence of a 90 foot fake pine tree sticking up in the midst of our oak woodlands will drastically change the rural beauty that is a key reason why we live here.**

**Arrowbee Lake makes this rural community a neighborhood with unique scenic views not present in other rural neighborhoods. The lake and park are the visual and recreational center of the Arrowbee community. A cell tower looming over them will be an eyesore that will diminish their value to the neighborhood. Realtors routinely tout the lake as a key attraction of the area. We use the lake and park for kayaking, fishing and swimming and we take our dog and grandchildren there frequently.**

**We believe this tower will lower our property values and make it difficult to attract a buyer if we ever decide to sell our home. We never would have purchased our property if the tower had been in place when we bought, or if we believed the County would approve something that would insert an industrial blight into the area and so diminish our property value and enjoyment of our property. It takes a certain type of person to want to live on and maintain rural acreage. We have to give up a lot of conveniences available in suburban areas in trade for the quiet, serenity and views present in rural areas. The very sort of people who want to purchase and live on rural property will be among those most repelled by this industrial installation, and the pool of prospective buyers will shrink even further.**

This tower, contrary to the information in the Development Application, is not well screened from view, nor does a stealth monopine “blend in” with the existing Grey Pines as alleged in the Planning Commission Staff Report:

“It is typical in a predominate oak woodland area to find single pine trees that project out and there are multiple Grey Pines in the area that do so. The project has been conditioned to design branches to be installed with random lengths that create an asymmetrical appearance conforming to the shape of a natural Grey Pine tree. Zoning Ordinance Sections 130.14.210 F and G require screening in order to reduce the aesthetic impacts to a less than significant level.”

Because Linda is an El Dorado County Master Gardener, we are acutely aware that the profile of a Grey Pine is nothing like a monopine:



Grey Pine



Monopine

This tower is going to stick out like the sore thumb it is. There is no way they can engineer a tower to look like a Grey Pine; a few asymmetrical branches will fool no one. The fact that your staff finds that a monopine “blends in” with a Grey Pine is astounding and insults the supposed review process. It makes us question whether the Planning Staff is trying to apply Zoning Ordinances to protect the property owners of this county or just “rubber stamp” projects for the benefit of business enterprises. The pictures above lead us to believe it is a rubber stamp process filled with boiler plate conclusions. If Zoning Ordinance Sections 130.14.210 F and G require screening in order to reduce the aesthetic impacts to a less than significant level, where is the screening? There is none. If the ordinance requires blending in, it doesn’t. The visual simulations show just that.

This project was presumably started in early 2014, leases recorded in June 2014 and plans first submitted in early 2015. We only found out about the project in November of 2015. At no time did Verizon, Epic Wireless or the landowners disclose this project to the affected neighbors during the planning stages. As such, we had zero input on the significant impact on our views and property values. It was only today, February 19, 2016, that Mark Lobaugh of Epic Wireless placed a call to us to see if we had any questions for him. We suspect he did so only because his request for a delay in the hearing was based in part on scheduling a “neighborhood outreach



meeting". There have been no signs advertising a meeting around the neighborhood, and finally contacting us three business days before the hearing doesn't afford much time for outreach.

The only real mitigation is an alternative site. Why hasn't Verizon found any? There are miles of open property and hills in this area. Why does their application list the same property twice? Why does their application list properties as alternatives that don't even qualify from a technical wireless standpoint? That is ludicrous. You might as well list a floating platform in Folsom Lake as an alternative and then disqualify it because it won't float. We think we know why Verizon/Epic Wireless doesn't have (or want) other alternatives. Because it is less costly for them to site this tower conveniently close to a private road and existing power. But while they and the landowners gain value from this site choice, we the property owners in the neighborhood lose value. Verizon will tell you their sites must be economically viable, but what is their definition of that and what proof can they offer? Verizon's pursuit of additional revenues or a quicker return on their investment should not be obtained at our expense.

We respectfully ask the Planning Commissioners to deny the Special Use Permit:

- We believe significant injury will result from allowing industrial blight into our area; injurious to our property values, injurious to our views and injurious to our lake.
- We believe the County is not responsible to insure Verizon's economic success by approving fiscally advantageous siting to them at the expense of homeowners' economic interests.
- We believe the project does not comply with the Zoning Ordinances.
- We believe we have the right to peaceful enjoyment of our property and retention of our property values.

We hope you will agree.

Sincerely,



Chuck and Linda Stevens  
1100 Trails End Court

CC: Mike Ranalli, Supervisor, District 4  
James Williams, Planning Commissioner, District 4

El Dorado County Planning Commission  
Rich Stewart, Chair, District 1  
Gary Miller, First Vice Chair, District 2  
Brian Shinault, Second Vice-Chair, District 5  
Jeff Hansen, District 3  
James Williams, District 4

RE: "Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole"

Dear Commissioners,

My family and I have lived in the Arrowbee Ranch Estates community for over 25 years. We moved from the Sacramento Area specifically to remove ourselves from an urban neighborhood and to live in the peaceful, beautiful countryside.

We are living in our 2<sup>nd</sup> home in Arrowbee Ranch Estates and specifically build with the lake view in mind. Never did it cross our minds that a cell tower might be erected close by and within our view. If we had any idea that El Dorado County would consider such an atrocity, we would have never purchased our property in its current location. This cell tower will ruin our view that we have paid so dearly for and it will ruin the natural country aesthetics of the neighborhood.

We are SHOCKED that this cell tower may be installed in a location that will affect so many property owners in our neighborhood. This cell tower will be completely incongruous with the beautiful Oak Tree, LAKE and country foothill atmosphere. Due to the topography of the area, this cell tower will loom more than 200 feet over the lake level and affect the view shed of more than 40 property owners located at lake level and on adjacent hillsides that face the tower location.

The external obsolescence and visual blight will have a devastating effect on property values and will be SERIOUSLY injurious to this neighborhood. I estimate my property value loss will be somewhere in the neighborhood of \$50K to \$100K.

In addition, there is no significant coverage gap. We have submitted a detailed log to you supporting this fact. We certainly are not against cell coverage, however, cell towers should be erected as far from private homes as possible. There are plenty of undeveloped hillsides that would easily take care of any need for additional service. Verizon, Epic Wireless or any other cell broker should not be allowed to erect towers for the purpose of profit to the detriment of private property owners and neighborhood property values. It's not our job to supply the road, electricity, etc. to make their tower installs more profitable.

Because of this tower will affect the views of over 40+ property owners and have such a negative effect on property values, I strongly request that you reject and deny the "Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole".

Respectfully submitted,



Richard Merideth  
1108 Shoreline Dr  
Placerville, Ca 95667

16-0041 Public Comment  
PC Rcvd 02-19-16 to 02-22-16

16-0041 Public Comment  
PC Rcvd 02-23-16



2/22/2016

Edcgov.us Mail - Fwd: Special Use Permit 15-0004/ Verizon -Arrowbee cell tower



PC 2/25/16  
#4  
Charlene Tim <charlene.tim@edcgov.us>  
3 pages

---

**Fwd: Special Use Permit 15-0004/ Verizon -Arrowbee cell tower**

---

Planning Unknown <planning@edcgov.us>  
To: Charlene Tim <charlene.tim@edcgov.us>

Mon, Feb 22, 2016 at 9:30 AM

Please see public comment email.

—— Forwarded message ——

From: Iona Merideth <imreteam@gmail.com>


Date: Mon, Feb 22, 2016 at 9:22 AM

Subject: Special Use Permit 15-0004/ Verizon -Arrowbee cell tower

To: planning@edcgov.us

Please include this letter from Mr and Mrs. Wilcox in the public comments.

---

 Wilcox letter (1).pdf  
523K



**Coloma Dental Office**  
Michael A. Wilcox, D.D.S.

7170 Highway 49 Unit #3  
PO Box 944  
Lotus, CA 95651  
(530) 621-0900  
www.colomadental.com

16 FEB 19 PM 4:15

RECEIVED  
PLANNING DEPARTMENT

February 18, 2016

El Dorado County Planning Commission

RE: S15-00004 Arrowbee Lake Verizon Cell Tower

Dear Commissioners,

We are residents of Arrowbee Estates and we live immediately next door to the proposed location of the Verizon cell tower. Our parcel # is 105-140-05-100. Though our parcels are 5 acres each, ours and the applicants, Eric and Liz Johanson, are pie shaped to allow each of us to own a sliver on the hilltop. We are the only two home owners on this hilltop and our homes are only a few hundred feet apart. We built our home in 1986 prior to the Johansen's. We chose to leave behind the industrial atmosphere and commercial conveniences of Sacramento in order to relocate our home and business to Lotus, California, where we fell in love with Arrowbee Estates. We fell in love with the neighborhood for the lovely private lake setting and for the peace and quiet, security and privacy. We even named the street that we live on, Bird's Eye View Lane. We then set out to build our dream home and arranged the placement of windows and balconies and our expansive decks to frame in the beautiful views that surrounded our parcel. *Our back deck and windows along one entire side of our home look across to the glistening reflection of Lake Arrowbee.* This is the area proposed for a 90 foot (and perhaps someday higher) cell tower. From what we can determine, the tower will mar our view onto the lake, particularly from our back deck. We are devastated at the prospect of waking up every day to see, right next to us, a massive, looming structure from our deck and windows. We purchased property in a neighborhood zoned residential 5 acres and we dreamed and worked and finally built a home where we plan to live out our lives and enjoy the beauty, and lifestyle that enticed us to sacrifice the conveniences of urban life and relocate and invest in Arrowbee Estates.

Our drive to work winds around the lake and all the surrounding hills and valleys around the lake are visible at a glance. We are delighted to sometimes see an eagle, migrating geese or other rare birds and wildlife frequenting the lake. We are also delighted to see other neighbors walking with children and/or pets, jogging and fishing and in many other manners enjoying the park and lake. It is all part of the experience of this neighborhood and I doubt that you can find any other neighborhood in El Dorado County with this incredible setting of miniature mountains and valleys surrounding such a symmetrically formed little lake, frequented by happy homeowners.

Now the possibility of a cell tower threatens our quiet enjoyment and residential property rights and values due to the horrific, industrial image (and making it look like some disproportioned, lopsided monster pine tree does not mitigate this image) that will be placed in a location which will be unsightly and forcefully visible to all who enjoy the lake view. We will not only be impacted by this image, but also by the interruption caused by the noise and traffic and whatever other commotion that occurs around an industrial project such as this. The impact will most certainly affect our property values. Who will buy property next to such a site unless they are enticed by low prices for this area?

The question of how the cell tower can impact health cannot even be considered in this circumstance. But people who are considering buying near a cell tower can choose to buy elsewhere, which is indeed what they would do if they are concerned about its effect on their health. This can have an impact on the selling price of our property. So not only do we lose the enjoyment of our property, but also the potential value of our property.

How any authority can deem it acceptable and approve a special use permit for big money (Verizon, a billion dollar plus corporation) in cahoots with one member of the community, our next door neighbor, who will receive financial gain, to adversely affect so many of those in the surrounding area who are heartbroken and appalled at the prospect of an undeniably industrial looking 90 foot high tree with its boxes attached, generators, fences and whatever else is associated with it, is absolutely astonishing.

Our opposition is not against the possible value of a cell tower; our opposition is to this location due to the adverse impact on so many of us, considering that there is no urgent need for the tower, and considering that there is cell reception in the area. Isn't it possible for Verizon, with all of its resources at hand, to make a concerted, diligent effort to find an alternative tower site that will not have this devastating effect on the neighborhood? There is so much land available to consider.

We are depending on the laws and zoning of El Dorado County to defend and protect our rights as property owners to quietly enjoy our property which we bought, invested our time and treasure and built our homes on based on the current zoning. We never would have purchased and built here if this tower was part of the plan. The planning commission is our only hope for help to protect our rights and preserve our neighborhood. We understand that you are under enormous pressure from Verizon to approve this project. We implore you to put yourselves in our position and to stand up for us and to not give approval for this special use permit.

Respectfully,

*Michael A. Wilcox and Carmen Y Wilcox*  
Dr. Michael A. Wilcox and Carmen Y Wilcox

16 FEB 19 PM 4:15  
RECEIVED  
PLANNING DEPARTMENT

February 17, 2016

El Dorado County Planning Commission

Rich Stewart, Chair, District 1

Gary Miller, First Vice-Chair, District 2

Brian Shinault, Second Vice-Chair, District 5

Jeff Hansen, District 3

James Williams, District 4

**RE: S15-0004 Arrowbee Lake Verizon Cell Tower**

Dear Commissioners,

We are residents of Arrowbee Ranch Estates and live at 1200 Arrowbee Drive. We have heard that Verizon wants to build a 90 foot cell tower right near the lake. The deck off our living room, kitchen and master bedroom looks over Arrowbee Lake and the tower will be front and center. We do not want this tower in our neighborhood!

We take our two boys, ages eight and ten, to use the park and lake for bike riding, swimming, fishing and also bring our boys' cousins there to play. There are conflicting reports about health issues related to these towers, and not really knowing what the truth is, we will probably choose not to take the risk and will have to stop taking our kids to the lake.

We moved here for a many reasons; the peace and quiet, the recreation provided by the lake and park, and the natural beauty. Please let us keep our neighborhood the same. We ask the Planning Commission to deny this project and let them find another site that will not affect so many people.

Thank you.

Sincerely,

Two handwritten signatures in black ink. The first signature is a cursive 'M' followed by a long horizontal stroke. The second signature is a cursive 'J' followed by a long horizontal stroke.

Michael and Jennifer Moreno

16-0041 Public Comment  
PC Rcvd 02-11-16 to 02-19-16

16-0041 Public Comment  
PC Rcvd 02-23-16

February 18, 2016

**To:** El Dorado County Planning Commissioners  
Michael Ranalli, El Dorado Board of Supervisors, District 4

**Subject:** Special Use Permit S15-0004/Verizon Wireless Communication Facility  
Arrowbee Monopine

We are writing to express our strong opposition to this unnecessary and injurious project. We are property and homeowners in the neighborhood, raising three girls and attempting to make a life for our family. Our front door is about 400 feet from the proposed project. The cell tower will loom over our home. It is a devastating proposition that has caused us a great amount of worry and distress.

Our request is that you deny the Special Use Permit, on the grounds that:

1. **It is injurious to the neighborhood** and to our family specifically, and therefore the Special Use Permit should be denied.
2. **Verizon's application is sloppy and deficient**, and therefore the negative declaration should be denied.

**Injurious to the Neighborhood**

In accordance with Section 130.22.540 of the Zoning Ordinance, the County can only approve a Special Use Permit if it finds that the proposed project "...would not be...injurious to the neighborhood..."

This project **will be injurious** to the neighborhood and to the individual residents and property owners. The project will do these 5 injurious things, any one of which is enough to result in project denial:

**1. Transform and vandalize the aesthetics and the viewshed of the neighborhood**

The centerpiece and defining characteristic of the Arrowbee neighborhood is the lake and park, and the surrounding countryside. The placement of this 90-foot (and potentially 140-foot) tower will utterly transform the viewshed. The tower will loom over the park and will intrude upon the peace and serenity and enjoyment of the neighborhood. The height of the tower will starkly transform the viewshed. The fake pine will not blend in with the natural oak woodland and will be an obviously inconsistent feature. There is nothing "stealth" about a so-called "stealth monopine" and frankly suggesting such is insulting. The tower will instead be a beacon of industrial blight. In fall and winter, when the oaks are bare, the tower will stand out even more.

**2. Diminish the recreational value of Arrowbee Lake**

The character of the community is based in part on the recreational value of the lake and park. The community enjoys swimming, fishing, boating, paddle-boarding and picnicking. The recreational value will be significantly and negatively impacted by the industrial eyesore created by the proposed cell tower. It is simply undeniable that the cell tower will make these activities less enjoyable and less desirable. This impact has been entirely ignored in the environmental assessment.

**3. Lower property values**

Arrowbee residents are absolutely justified in our concern about a reduction in the value of our homes. Industry studies and experienced real estate and appraisal professionals agree that cell towers negatively impact property value. The ripple effect of negative property values in Arrowbee will also impact the value of property in the surrounding area. See the attached fact sheet (Attachment 1).

Note that *perceived* health risks are a major factor in turning prospective buyers away from a property located near a cell tower. Regardless of what the so-called experts at the FCC say, it is undeniable that there are concerns being raised worldwide about the negative health effect of electromagnetic fields and radiofrequency radiation. Even though you are barred from basing a cell tower siting decision on health impacts, you cannot deny the reality that the perceived impacts will undoubtedly shrink the pool of prospective buyers for properties near cell towers. See attached fact sheet to learn what information is readily available to anyone who does a quick Google search (Attachment 2).

**4. Deny citizens the full use of their own property to the benefit of a business enterprise that is inconsistent with the community**

The cell tower and attendant maintenance will increase noise and disrupt peace and tranquility of the neighborhood. The blight caused by the cell tower will impede the enjoyment of the recreational and aesthetic value for individual homeowners, who purchased their property specifically for the rural peace and quiet and beauty. The cell tower and lease is a business enterprise that is incompatible with the community—it also causes direct financial harm to other property owners in the service of a private business enterprise. The proposed business enterprise will undeniably degrade residents' quality of life.

**5. Threaten the financial stability of the Four Corners Land Owners Association (FCLOA)**

The FCLOA is a voluntary association. It owns the park parcel and dam parcel, and is responsible for the maintenance, including the dam safety inspection fee required by law. The ONLY way to raise the funds for this expense is by the voluntary membership of residents in the FCLOA. The only reason that members join the FCLOA is to enjoy the lake and park, and to tout the benefits of the lake and park as a marketing tool when they go to sell their properties. If the lake and park have a diminished value, there will be less reason for people to join as members, less reason to pay memberships dues. The FCLOA will not be able to maintain its legal responsibility to the Department of Water Resources. Verizon utterly failed to even recognize this negative impact, let alone study it in their environmental assessment. Verizon failed to consult anyone in the neighborhood, either FCLOA or individual residents and neighbors. They prove themselves to be blatantly disingenuous when they requested a two-week delay in holding the Planning Commission public hearing. They had TWO YEARS to talk to the neighbors and waited until the last minute to generate some bogus way to claim they've attempted to talk to the neighbors. What a sham.

### **Stunningly Deficient Environmental Assessment**

Verizon is asking the Planning Commission to certify a Negative Declaration. However, their application and environmental assessment are deficient, and a negative declaration is not justified.

#### **1. Inadequate environmental review**

- There is no analysis of the impact to recreational resources, including the use of Arrowbee Lake and Park.
- There is no evaluation of the impact on the financial stability of the FCLOA.
- There is no evaluation of the aesthetic impact. Claiming that the cell tower will blend in because it looks like a fake pine tree is not an adequate evaluation.
- There is no evaluation of the impact to local residents caused by noise and lights from frequent maintenance crews at any time of day or night, 365 days a year.
- There is no evaluation of the impact on our roads caused by added maintenance crews, of which there may be several at any given time once the tower is used for co-location. Our roads are already underfunded through the Road Zone of Benefit, and we have few resources available.
- Verizon has not included a reasonable range of alternatives. The only alternatives offered are WITHIN the neighborhood. The application listed one alternative twice. The number and type of alternatives are limited by Verizon's claims, without any data or analysis to justify the claims. There is no way for the public or the Planning Commission to evaluate Verizon's alternatives properly and with confidence. Verizon shows a stunning lack of transparency and objectivity in their limited evaluation of locations. A true alternative site analysis would show that the only reason Verizon has chosen this location is because it is



in a developed area: it already has roads and power. Verizon, one of the largest corporations in the country, should have to investigate other alternatives that would have less impact on the people of this county.

## **2. Weak and useless project purpose and need**

- There is no proof that there is a need for additional cellular coverage, and therefore no actual need for the project.
  - Coverage maps provided in the application show that primary transportation corridors already have coverage
  - Local users have personally experienced that cellular coverage is excellent throughout the area, including primary transportation corridors and near the river.
  - Before and after coverage maps provided in the application aren't even at the same scale. They don't account for new cellular towers since February 2015. They also show no tangible improvement.
  - There is no proof that there is a significant gap to fix.
  - Verizon's own coverage maps on their website show 4G service, high speed data and push-to-talk is available throughout the area.
  - Verizon's claim that the project is needed to "provide service," "serve as a backup to the existing landline service," and "improve mobile communications" is specious at best. There is no proof in their application packet that this service is needed.
  - Any claim that this tower will improve emergency services is also specious. The FCC already requires "wireless service providers to transmit all 911 calls regardless of whether the caller subscribes to the provider's service or not" (from the FCC website).

## **3. A negative declaration is not appropriate in this situation**

- There is sufficient evidence in the record to show the possibility of significant impact with regard to aesthetics and recreation. This project should be denied outright. But at an absolute minimum, an EIR should be conducted. An EIR would allow for thorough, proper and transparent evaluation of the alternatives, the project purpose and need, and the aesthetic and recreational impacts.

### **In Conclusion**

The few local residents who have spoken out in favor of the cell tower will undoubtedly be relieved to learn that their reasons for wanting the new tower have ALREADY been resolved by the fact that there is ALREADY excellent cellular service throughout our area, including the ability to use mobile technology for emergency services. Any argument that this new cell tower will improve residents' property value is not only laughable but insulting.

The undeniable fact remains: the Arrowbee Lake and Park is a unique recreational and aesthetic resource in El Dorado County. The cell tower is unnecessary. Those of us who will be forced to live near the new tower will, through no fault of our own, be forced to suffer significant financial hardship through lost property value. We will be forced to live under the shadow of the tower every day, for as long as we live here. All to the benefit of a giant corporation. Verizon has no right to profit off our family. Our neighborhood was not meant for this type of industrial eye-sore.

- Every time we walk our front door, we'll see the tower.
- Every time we go biking through the neighborhood, we'll see the tower.
- Every time we walk to the mailboxes, we'll see the tower.
- Every time we go outside to work in the yard and garden, we'll see the tower.
- Every time we sit on our front porch, we'll see the tower.
- Every time the kids play basketball on the driveway, we'll see the tower.
- Every time we drive into the neighborhood, we'll see the tower.
- Every time we drive up our quaint little one lane road to our house, we'll see the tower.
- Every time we have friends and family over to barbeque, we, and they, will see the tower.
- Every time we go fishing, or paddle-boarding, or swimming, or picnicking, we'll see the tower.
- It will intrude on every attempt at a peaceful moment outside our home.

Our homes are all we have. Our home provides our only net worth. It is the one place on the planet where we can escape to enjoy a small patch of peace and quiet. If Verizon wants to increase their profits, it shouldn't be at our expense. They should be required to prove the need for the project and that they are doing everything possible to minimize impacts. They have not done this. They expect you to rubber stamp the project because they are bullies and they think they have rigged the system in collusion with the FCC.

The reality is that you, as the Planning Commission and local government representatives, have every right to use your discretion. You have every right to require a full EIR. You have every right to outright deny the project because it doesn't meet the requirements of your Special Use Permit thresholds. Put the burden on this large corporation, with their extensive resources, to do their due diligence and fully investigate options that are not injurious to neighborhoods and to people.

Submitted by email:

Janet Barbieri & Quang Nguyen  
1057 Shoreline Drive, Placerville  
530-919-9306

Melvyn Garbett  
4940 Glory View Dr.  
Placerville, CA 95667

Use Permit S15-004/Verizon Wireless Communication  
Facility Arrowbee Monopole

Dear El Dorado County Commissioners:

This is to let you know that my wife Linda and I are very much concerned about the presence of a cell tower in our neighborhood. We chose this area for our retirement years, because of its beautiful lake and peaceful surroundings. Our concern now is that the cell tower will ruin this attractive landscape, not to mention reduced property values. I might also add that I have never had any problem with the existing cell reception and I question the need for additional service.

I strongly request that you reject and deny the "Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole."

Respectfully submitted,

Melvyn Garbett



2/22/2016

Edcgov.us Mail - Fwd: Special Use Permit 15-0004/ verizon-Arrowbee Cell Tower - Garbett



PC 2/25/16  
#4  
Charlene Tim <charlene.tim@edcgov.us>  
2 pages

---

**Fwd: Special Use Permit 15-0004/ verizon-Arrowbee Cell Tower - Garbett**

---

Planning Unknown <planning@edcgov.us>  
To: Charlene Tim <charlene.tim@edcgov.us>

Fri, Feb 19, 2016 at 3:34 PM


Please see public comment email.

----- Forwarded message -----

From: Iona Merideth <imreteam@gmail.com>  
Date: Fri, Feb 19, 2016 at 3:27 PM  
Subject: Special Use Permit 15-0004/ verizon-Arrowbee Cell Tower - Garbett  
To: planning@edcgov.us

Please include this letter from Melvyn Garbett in the public comments

---

 cell tower - letter from Mel Garbett.pdf  
17K



1020 Trails End Drive  
Placerville, CA 95667  
(Arrowbee Ranch Estates)

PC 2/25/16  
#4

16 FEB 16 AM 9:13  
RECEIVED  
PLANNING DEPARTMENT

15 February 2016

Community Development Agency

2850 Fairlane Court  
Placerville, CA 95667



Dear Sir or Madam:

I am a property owner in Arrowbee Ranch Estates. I have lived here for 28 years. Having moved here to enjoy the rural ambiance of the area, I am deeply disturbed by the proposal to build a Cell Tower near Arrowbee Lake.

The tower will negatively impact the scenic beauty of the area as well as generating 80-90 decibels of noise around the clock. Both of these features of the tower will lessen my daily enjoyment of my home. It will lower my quality of life. Additionally, the tower will devalue my property in the eventual event of its sale. The visual eyesore and the continual generation of noise will not be a draw for potential buyers. All of the property values of homeowners in this area will decline.

I also own an undeveloped property (1056 Trails End Drive) in Arrowbee Ranch Estates. It is my retirement investment, if you will. This property will be in direct line-of-sight of the tower and will be the recipient of the constant background noise. The proposed tower will devalue this investment in my future.

During my career working for Sacramento County I was trained as a Noise Abatement Officer and was trained in the use of noise rating handheld monitors. I am familiar with the noise rating scale. I know that 80 decibels is the maximum allowable level for noise in a residential neighborhood. It may have changed, but when I was working, this noise level could only be reached from 0800 hours to 2200 hours. The noise levels had to decrease at night. There is no indication that the Cell Tower will lower its noise level at any time during the 24 hour daily cycle.

**I am opposed to the installation of the Cell Tower in Arrowbee Ranch Estates.**

Sincerely,

Kay Keenan

County of El Dorado Community Development Agency  
Development Services Division-Planning Services  
2850 Fairlane Court  
Placerville, CA 95667

February 21, 2016

Re: Special Use Permit S15-0004/Verizon Lake Arrowbee Monopine

Dear Commissioners,

We just purchased our home and moved in September 2015. We have 10 acres on Trails End Drive. We bought this property to be able to have our horses on rural property and enjoy a rural lifestyle. We learned about the cell tower just recently and we are very opposed to it. We would not have considered this property if we had known the tower was going in. Someone should have disclosed that information to us since this project was already submitted to the County. We do not know if the sellers knew, but they should have been told by the County.

The view out the back of our house and property looks right up at the cell tower site. Dan is a photographer and has taken a photo and inserted a monopine to see what it looks like. It will ruin our view. We are enclosing this photo.

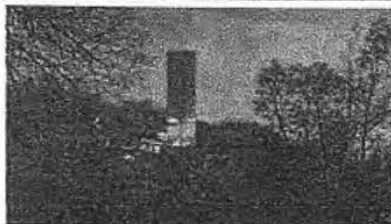
We also know that this will be visible from Lake Arrowbee and all around the neighborhood where we walk. We are worried that this will decrease our property value.

We respectfully ask you to deny this Special Use Permit.

Sincerely,

Brenda Burton & Dan  
1041 Trails End Drive

I have attached a picture that was taken from my backyard and a picture of a monopine cell tower overlaid on it in order to give you an idea of what I would have to look at everyday.



Arrowbee Verison Tower.png  
6026K

2/23/2016

Edcgov.us Mail - Fwd: SpecialUse Permit S15-0004/Verison Wireless Communication Facility Arrowbee Monopine



PC 2/25/16  
#4  
2 pages  
Charlene Tim <charlene.tim@edcgov.us>

---

**Fwd: SpecialUse Permit S15-0004/Verison Wireless Communication Facility Arrowbee Monopine**

---

Planning Unknown <planning@edcgov.us>  
To: Charlene Tim <charlene.tim@edcgov.us>

Mon, Feb 22, 2016 at 3:52 PM

Please see public comment email.

----- Forwarded message -----

From: **brenda burton** <blbinss@sbcglobal.net>  
Date: Mon, Feb 22, 2016 at 3:14 PM  
Subject: SpecialUse Permit S15-0004/Verison Wireless Communication Facility Arrowbee Monopine  
To: "planning@edcgov.us" <planning@edcgov.us>  
Cc: ljstevens0807@gmail.com





El Dorado County Planning Commission  
Rich Stewart, Chair, District 1  
Gary Miller, First Vice Chair, District 2  
Brian Shinault, Second Vice-Chair, District 5  
James Williams, District 4  
Jeff Hansen, District 3

**Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole"**

**Dear El Dorado County Commissioners,**

**We are apposed to a cell tower at this designated site due to the loss of value to the homes in the surrounding neighborhoods and the risk of health issues. There must be plenty of places that do not include a beautiful lake setting where a tower can be placed. We respectively request that you review your plans for this tower location.**

**I strongly request that you reject and deny the "Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole".**

**Respectfully submitted,**

**Ken McClean  
Pauline McClean  
1320 Burnt Shanty Creek Road  
Placerville CA 95667**

# **EXHIBIT E**

## **MERIDETH REALTY INC**

1108 SHORELINE DRIVE,  
PLACERVILLE, CA

### **"Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole"**

Dear El Dorado County Commissioners,

I am a licensed Broker and have been selling Real Estate in El Dorado County for 19 years. My RE agent license number is 01228363 and my RE broker license number is 01936348.

Having sold MANY properties that suffer from negative impact situations such as proximity to cell towers, huge power lines, backing to busy streets which have a high noise factor, etc., I have experienced the extreme difficulty in selling those homes and the impact of decreased value on the property owner. My brokerage keeps impeccable records of buyer feedback....calling all agents who show my listings and the consistent feedback from buyers as reported by their agents is typically stated, "beautiful house...too bad it's next to a "cell tower", large Power pole, busy street, etc. behind it". Or, "Beautiful House....Too bad it has a view of the cell tower, transmission line, etc."

In my experience, these properties consistently sell for 10 to 25% less in value than other duplicate or similar properties. THIS LOSS OF VALUE IS INJURIOUS TO EVERY NEIGHBORHOOD. The people of El Dorado County who live in the rural, larger parcel areas, have moved into these neighborhoods to avoid these types of situations and for the beauty & serenity these rural neighborhoods provide.

This cell tower will be completely incongruous with the beautiful Oak Tree, LAKE and country foothill atmosphere. Due to the topography of the area, this cell tower will loom more than 200 feet over the lake level and affect the view shed of more than 40 property owners. My professional opinion, based on experience, the visual blight will have a devastating effect on property values and will be SERIOUSLY injurious to this neighborhood.

As a Real Estate professional, I strongly recommend that you reject the "Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole".

Respectfully submitted,

Iona Merideth, Broker

# **EXHIBIT F**

**Professional Real Estate Services**  
**3149 Travois Circle, Rescue, Ca. 95672**

**Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole"**

**Dear El Dorado County Commissioners,**

**I am a licensed Real Estate agent working as in independent contractor with Professional Real Estate Services and have been selling Real Estate in El Dorado County for 15+ years. My RE agent license number is Bre # 01312547.**

**It really upset me as a Real Estate Broker when I first heard about this cell tower being installed in such a beautiful community. Are you aware of the negative impact such an eyesore would have on the homes located there ? Homes that are located close to things such as cell towers, power lines, busy roads, etc, are not nearly as desirable when it's time to sell their property. I mean the reason people move to rural area's is to enjoy the views and serenity not to look at a cell tower looming over the local lake.**

**In my opinion the cell tower will have a devastating impact on the properties located here.**

**As a Real Estate professional that sells properties in this area, I strongly recommend that you reject the "Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole"**

**Respectfully submitted,**



**Curt Tucker - Broker  
Rescue Resident**

# EXHIBIT G



SATCHWELL APPRAISAL SERVICES, INC

P.O. BOX 746

ORANGEVALE, CA. 95662

" Use Permit S15-004/Verizon Wireless Communications Facility Arrowbee Monopole"

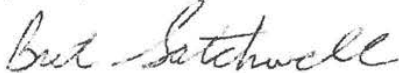
Dear E Dorado County Commissioners,

I am a certified residential appraiser working as an independent contractor and I have been appraising in the greater Sacramento region which includes El Dorado County for approximately 14 years. My state certified license number is AR030009.

Banks, mortgage companies, real estate agents and home owners have hired me over the years to inspect their property and determine a market value. It is this appraiser's opinion that there is a negative impact on value and marketability of a home that is in proximity to a cell tower, power pole, power lines, rail tracks, busy road, industrial zone and hazardous sites. I have appraised approximately 3,000 homes located throughout the greater Sacramento region over my 14 year career. I have appraised a total of four properties (Sacramento, Placer and El Dorado County) that were located near power lines and the final value was impacted by the external obsolescence. I have been advised in writing by lenders – (scope of work) that if a property is located in proximity to a cell tower, power pole, power lines, rail tracts or hazardous site that I stop at that point and contact the lender and advise them of the situation. Some lenders will not lend on a home that suffers from this type of external obsolescence. Some lenders will cancel at this time and some will proceed but advise appraiser to address the negative impact on value and marketability of the property. This appraiser has heard from real estate agents over the years that it takes much longer to sell a home located near cell towers, power lines and that it is common to see a reduction in the listed sales price.

My professional opinion is that any property that is in proximity of a cell tower, power pole, power lines, rail tracts, industrial site or hazardous area will suffer external obsolescence which will impact value and marketability.

Respectfully submitted,



Bret Satchwell, certified residential appraiser

# EXHIBIT H

# APPRAISAL PROFESSIONALS

3129 Perlett Drive, Cameron Park, CA 95682 \* Ph/Fax: (530) 676-0391 \* [orders@appraisal-professionals.net](mailto:orders@appraisal-professionals.net)

February 16, 2016

## PLANNING SERVICES

Planning Commission  
2850 Fairlane Court  
Placerville, CA 95667

Attn: Char Tim, Clerk  
Planning Commission

Subject:  
Special Use Permit S15-0004/Arrowbee Lake Verizon Wireless Cellular Tower Project

Greetings:

The purpose of this letter is to direct the attention of the commissioners to the impact of the proposed project on surrounding property owners where the hill proposed as the site for the tower is part of the view of the homeowner.

As pictured in the project request/description, the tower does stand out and does not blend into the surrounding canopy due to the height and evergreen design in a pastoral area of oak trees of less than 75 feet in height. As a result, the proposed tower results in "External Obsolescence" to those properties cited above.

The proposed tower meets the definition of external obsolescence as: "An element of depreciation; a defect, usually incurable, caused by negative influences outside a site and generally incurable on the part of the property owner" (The Dictionary of Real Estate Appraisal, Appraisal Institute). Note that as such, the financial impact on the surrounding sites is NOT alleviated or mitigated over time.

It is my experience that where an objectionable structure such as a high tension power line tower, large water tank, advertisement billboard or high traffic artery imposes on the surrounding view, the loss in value to the property so affected may range from 5% to 25% of the total value of the property.

Therefore, on behalf of the property owners so affected, it is recommended without reservation that the above cited Special Use Permit be denied.

Respectfully Submitted,



Harvey A. Hartman; IFA, CA-R, CRP Pin  
CA State Certified Appraiser Since 1991  
[www.Appraisal-Professionals.net](http://www.Appraisal-Professionals.net)  
Tel: 916-281-8251/530-676-0391

# EXHIBIT I

February 19, 2016

Gay Berge

RE/MAX Gold Real Estate

3317 Coach Lane Suite 5500

Cameron Park, Ca. 95682

"Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopole"

Dear El Dorado County Commissioners,

I am a licensed Real Estate and have been selling real estate in El Dorado County for 32 years. My RE license number is 00875651.

I am very much against placing a cell tower in this location of rural home sites. It will be a negative impact to property values in the area. I have sold many properties over the years which are affected by loss of value due to cell towers and large power lines. I would estimate the property values would drop between 10-20%.

I strongly encourage you to reject this special use permit.

Sincerely,

Gay Berge

RE/MAX Gold Real Estate

530-677-1536

# EXHIBIT J

# An Analysis of Cell Tower Ice Falls

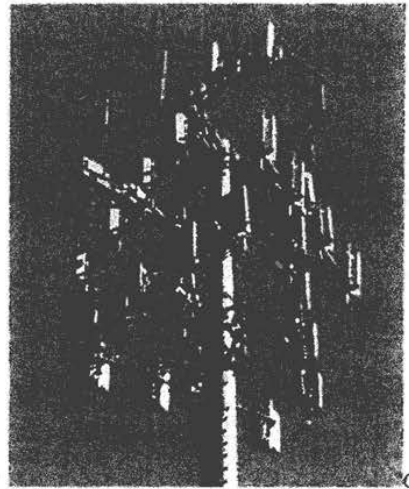
([www.symdesign.us/icefall](http://www.symdesign.us/icefall))

Dr. Dennis L. Rogers\*

March 28, 2013

**Abstract:** The following is an estimate of the effects of ice falling from cell towers. The velocity of impact and distance of impact from the tower are calculated for the type of ice fragments expected due to freezing rain on the flat surfaces of the tower and antenna structures. These calculations are not intended to be comprehensive but do show the magnitude of effects to be expected.

**Introduction:** Freezing rain can cause ice to build up on the flat surfaces of the antenna elements arrayed around cell phone towers and also on the tower itself. The photo to the right shows such an antenna array. Since these surfaces are oriented vertically one would expect the ice to form primarily in almost flat sheets oriented vertically to the ground. The thickness of these sheets could be up to 6 cm thick due to freezing rain. In what follows I will consider the fate of such a sheet of ice that has detached from the cell tower surface. This could be due to heat from the antenna currents melting a thin layer next to the tower or antenna element. Indeed such ice falls have been observed.



Cell Phone Tower Antenna array in Kent NY.

**The Physics:** The sheet of ice will be subject to two forces: the downward force of gravity and the force exerted by wind resistance. The force of gravity is constant and equal to:

$$\text{Eq 1 } F_{grav} = Mg$$

where  $g = 9.8 \text{ m/s}^2$  is the acceleration of gravity, and  $M$  is the mass of the ice sheet in kg. In what follows I will assume the use of MKS units in the calculations.

The force due to wind resistance depends on the actual geometry of the piece of ice but is roughly proportional to the area exposed to the wind,  $A$ , the square of the velocity,  $v$ , at which it falls and the drag coefficient,  $C_d$ , which depends on the exact shape of the ice fragment. Using the EIA-222-C standard for calculating wind forces on antenna structures, the wind force can be written :

$$\text{Eq. 2 } F_{wind} = F_0 A v^2 C_d$$

$$\text{where } F_0 = 0.26 \frac{\text{nt} \cdot \text{s}^2}{\text{m}^4}$$



**No Wind:** The simplest case is where there is no wind blowing. The wind resistance is then only due to the velocity at which the object is falling. The downward acceleration,  $a$ , is then given by:

$$\text{Eq. 3} \quad a = \frac{dv}{dt} = \frac{F_{total}}{M} = \frac{-Mg + F_0 A v^2 C_d}{M} = -g + \frac{F_0 A v^2 C_d}{M}$$

For the thin sheets oriented vertically, the second term, the wind resistance force, will be negligible and the ice will fall primarily due to the force of gravity. The cases in which the ice sheet is not oriented vertically will not be considered. Assuming a tower height of 50 meters (about 150 ft) and only gravitational forces, the ice sheet would reach a velocity of 31 m/s or about 67 mph before hitting the ground. Assuming the flat surfaces of the antenna structures are 1 meter sq in size and that the ice is 6 cm thick this would result in a piece of ice weighing approximately 54 kg (119 lbs) striking into the ground with a speed of 67 miles per hour. Since the wind resistance is negligible for vertically oriented sheets, this speed will be independent of the size of the ice sheet.

**With Wind:** With wind, of course, the ice can move in the direction of the wind before reaching the ground. A sheet of ice can experience considerable force from the wind, especially if the flat side of the sheet is perpendicular to the wind. In this case there is an equation of motion for both the vertical direction and the direction in which the wind is blowing. Vertically the equation is the same as in the no wind case:

$$\text{Eq 4.} \quad a_z = \frac{dv_z}{dt} = -g + \frac{F_0 A v_z^2 C_d}{M}$$

while in the direction of the wind:

$$\text{Eq 5.} \quad a_x = \frac{dv_x}{dt} = \frac{F_0 A (v_w - v_x)^2 C_d}{M} - \frac{F_0 A v_x^2 C_d}{M}$$

where now  $v_w$  is the velocity of the wind and  $v_x$  is the velocity of the ice in the direction of the wind. The first term is the force on the windward side of the sheet and the second term is the force on the opposite side of the sheet due to normal wind resistance. The amount the ice travels in the direction of the wind depends on the thickness of the sheet, with thinner sheets traveling further. These equations have been solved to determine the amount of travel in the direction of the wind that the ice sheet would travel before impacting the ground. Again assuming a sheet 1 meter-sq sheet, the figure below shows the distance from the tower the ice sheet would fall for four different thicknesses and weights:

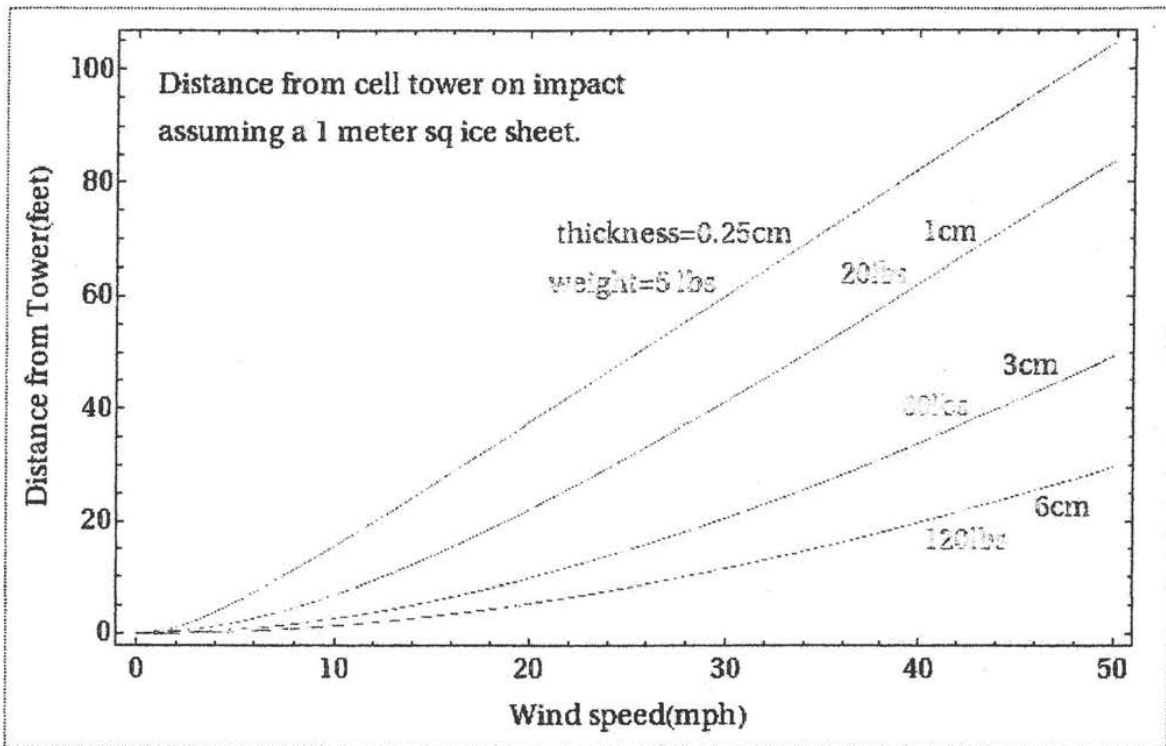


Figure 1. Distance of ice fall from tower vs wind-speed for four different sheet thicknesses

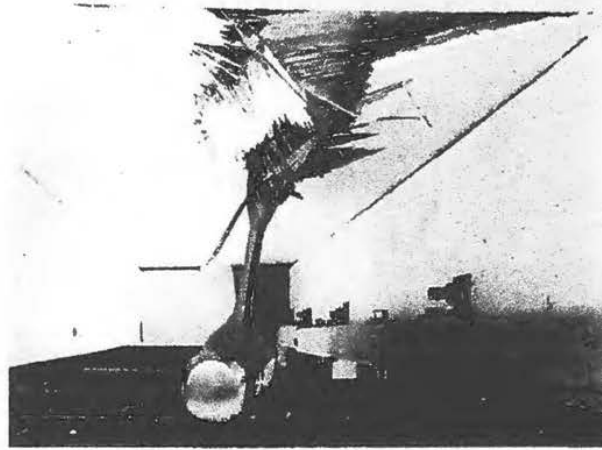
As in the no wind case, the ice sheet would be traveling at approximately 67 mph on impact. Obviously, thinner sheets can travel further from the tower. Note also that, since the weight of the sheet is proportional to it's area, the distance it falls from the tower will be approximately independent of it's cross sectional area.

**Summary:** This analysis has shown that for one case, that of thin sheets of ice falling from the vertical part of the antenna structures, the ice fall can be a dangerous problem with the ice fragments weighing over a hundred of pounds impacting the ground at almost 70 mph. It also shows that wind conditions can cause these fragments to fall as much as 100 feet from a 150 foot tower with smaller, thinner sheets falling the furthest distances. Of course, as the photo to the right illustrates, in reality the problem can be more complex with the ice fragments being composed of a combination of both snow and ice and the ice build up being more extensive than envisioned in this analysis with possibly even more severe consequences. Therefore care must be taken in positioning these towers to place them sufficiently distant from other structures and places where people may live and work.



\* Dr. Rogers received his Phd in theoretical solid stated physics from the University of California at Davis in 1977. Since then he has worked at IBM Research in Yorktown Heights NY for 27 until 2005. Since then he has formed the company Symbiotic Designs and is developing cell phone applications and energy saving devices.

# EXHIBIT K



**Figure 2 - Hammer Fall from Tower**

In order to protect the public, a radial "fall distance" is generally specified from the tower with respect to public access areas. This radius should be flexible based upon circumstances (e.g. the nature of the land and the likelihood of public egress), but it should be certified by a competent engineering study.

Tower structures are specified by the industry-developed TIA/EIA 222-F standard; this is the only "complete" standard with respect to towers in that it deals with all manner of load, ice and wind conditions. The EIA-222 standard, which is periodically updated (the current revision is "F", the next revision, due next year, will be "G"), should be utilized by engineering personnel to ensure the safety of the public, since they are more rigorous than the corresponding BOCA or Civil Engineering standards which do not specifically refer to tower structures.

Specifying other standards in addition to EIA can create conflicts. For instance, the EIA standard calls for a two hundred percent safety margin for some tower components. The corresponding structural standard permits a safety factor of one hundred sixty percent, and in some cases, only one hundred twenty-five percent. The single exception to this rule are the standards promulgated by Wisconsin DILHR, which are designed to work in tandem with EIA-222, and result in a new structure which is approximately 30% stronger than would otherwise be the case. This is good for a new structure, but the DILHR rules also conspire to reduce the number of additional co-located carriers which can be placed on *existing* structures, thereby aggravating the site shortage referred to in Section 1.2.

An important issue with respect to tower safety is ice loading. Typically, cell towers are designed to survive winds of 73 miles per hour with ½" of radial ice. While this specification does not violate the EIA standard, it represents a set of conditions which has been realized more than once within the last 20 years. However, it is precisely these types of overstress conditions which are

PC 2/25/16  
#4

Charlene Tim &lt;charlene.tim@edcgov.us&gt;

---

**Fwd: Arrowbee S15-0004/- Verizon service call, text email log document**

---

**Planning Unknown** <planning@edcgov.us>  
To: Charlene Tim <charlene.tim@edcgov.us>

Tue, Feb 23, 2016 at 4:37 PM

Please see public comment email.

----- Forwarded message -----

From: **Iona Merideth** <imreteam@gmail.com>  
Date: Tue, Feb 23, 2016 at 4:25 PM  
Subject: Re: Arrowbee S15-0004/- Verizon service call, text email log document  
To: planning@edcgov.us  
Cc: rich.stewart@edcgov.us, gary.miller@edcgov.us, jeff.hansen@edcgov.us, james.williams@edcgov.us, brian.shinault@edcgov.us

Dear Commissioners, et al

I understand Mark Lobaugh/verizon has requested a postponement of the public hearing currently scheduled for Thursday 2/25/16. I STRONGLY OBJECT TO ANY POSTPONEMENT. Mark Lobaugh failed to reach out to our community after he requested his last postponement and has had over a year to prepare for this hearing. I request that you hold the public meeting as scheduled for Thursday 2/25/16. Respectfully submitted, Iona Merideth

On Mon, Feb 22, 2016 at 4:52 PM, Iona Merideth &lt;imreteam@gmail.com&gt; wrote:

Please include this in the public records. thank you, Iona Merideth

--

--

**Iona Merideth, Broker****Merideth Realty Inc.**

916-235-7770 Office M-F only  
916-834-6873 Cell  
888-591-7110 fax  
[www.myfolsomagent.com](http://www.myfolsomagent.com)



PC 2/25/16  
#4  
Charlene Tim <charlene.tim@edcgov.us>

---

## Postponement Request Re: Special Use Permit S15-0004/Verizon Wireless Communication Facility Arrowbee Monopine

---

Janet Barbieri <janet.m.barbieri@att.net>

Tue, Feb 23, 2016 at 4:42 PM

To: rich.miller@edcgov.us, gary.miller@edcgov.us, brian.shinault@edcgov.us, jeff.hansen@edcgov.us, james.williams@edcgov.us

Cc: Iona Merideth <imreteam@gmail.com>, Linda Stevens <ljstevens0807@gmail.com>, charlene.tim@edcgov.us, bosfour@edcgov.us

Dear Commissioners:

I understand that the Verizon representative in charge of the special use permit application referenced above has asked for yet another delay in the hearing. This is simply stunning and shows an utter contempt for your commission and the people in our neighborhood who have been working diligently to prepare for this hearing, and whose lives are in absolute turmoil while this wholly unnecessary and extraordinarily injurious project hangs over our heads.

This Mark Lobaugh person has had two years to reach out to residents and get his act together, and yet he petitioned you for a postponement already in order to host and outreach meeting for the community—which hasn't happened. He didn't even bother to call me until yesterday, a mere 3 days before the hearing, and I suspect that was merely a bit of kabuki theater.

As I'm sure you have seen from all the opposition letters coming in, our community is strongly opposed to this project. We have worked diligently for the past few months, since first learning of the project, to inform residents, do our own research, and present you with our own findings. This work is not insubstantial. People have made plans to be at this meeting. They have written letters, and have made arrangements to attend.

I encourage you to keep your hearing planned as scheduled to respect the work we have done in preparation.

Thank you for your consideration.

Janet Barbieri  
530-919-9306