



County of Sonoma
Permit & Resource Management Department

**PLANNING COMMISSION /
BOARD OF ZONING ADJUSTMENTS APPEAL FORM**

PJR-021

To: Board of Supervisors
County of Sonoma, State of California

File No.: UPE22-0051

Appeal is hereby made by Applicant: VB BTS II, LLC ("Vertical Bridge") and Co-Applicant: T-Mobile West LLC ("T-Mobile")

Mailing Address 750 Park Commerce Drive, Suite 200

City / State / Zip Boca Raton, FL 33487

Phone: (701) 368-9949 Email: Brandon.StMichel@verticalbridge.com

The Sonoma County Planning Commission / Board of Zoning Adjustments on
(date) 6/13/2024

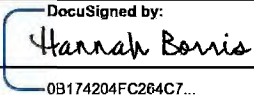
approved / denied a request by VB BTS II, LLC ("Vertical Bridge") and T-Mobile West LLC ("T-Mobile")
for a Use Permit for a a 70'- tall intermediate freestanding commercial telecommunication facility.

Located at 9300 Mill Station Road, Sebastopol, CA. 95472

APN 061-141-001 Zoning: DA B6 20, RC100/25 Supervisorial District: Fifth

This appeal is made pursuant to Sonoma County Code Chapter Section 26-92-160 for the following specific reasons:

Please see attached document.

Appellant Signature  Date: 6/20/2024
0B174204FC264C7...
Authorized Agent, on behalf of Applicant

DO NOT WRITE BELOW THIS LINE - TO BE COMPLETED BY PERMIT SONOMA STAFF

This appeal was filed with Permit Sonoma on this date 6/13/2024,
receipt of which is hereby acknowledged.

Permit Sonoma Staff Signature _____

UPE22-0051

Planning Commission/Board of Zoning Adjustments Appeal Form

This appeal is made pursuant to Sonoma County Code Chapter Section 26-92-160 for the following specific reasons:

The Board of Zoning Adjustments' findings denying the Use Permit for a 70-foot tall intermediate commercial freestanding telecommunication facility at 9300 Mill Station Road, Sebastopol, CA 95472 are not supported by substantial evidence when viewed in light of the whole record. Additionally, the findings are contrary to applicable Sonoma County code requirements for a freestanding intermediate commercial facility in the Diverse Agriculture district and are contrary to applicable law.



Vertical Bridge Holdings, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487
561-948-6367
VerticalBridge.com

June 20, 2024

County of Sonoma
Permit and Resource Management Department
2550 Ventura Avenue
Santa Rosa, CA 95403

**RE: UPE22-0051, 9300 Mill Station Road
Vertical Bridge Site ID - CA-7225
Letter of Authorization – Wireless Policy Group**

To Whom It May Concern:

Please accept this letter as authorization for Hannah Borris, Wireless Policy Group to represent and serve as an authorized agent for Vertical Bridge regarding the above referenced permit application.

If you have any questions, please contact me at the below contact me at 561-948-6367.

Sincerely,

Ariel Rubin, P.E.
Vice President of Tower Development
Vertical Bridge REIT, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487



June 7, 2024

Sonoma County Board of Zoning Adjustments
575 Administration Drive
Room 102A
Santa Rosa, CA 95403

[VIA EMAIL: PlanningAgency@sonoma-county.org](mailto:PlanningAgency@sonoma-county.org)

RE: UPE2-0051 (70' Intermediate Freestanding Telecommunication Facility)
("Application")
Response to Board of Zoning Adjustments ("BZA")
June 13, 2024, Continued BZA Hearing

Dear Commissioners:

On behalf of Vertical Bridge ("Applicant"), we submit this letter in response to the BZA's request at the May 23, 2024, BZA hearing for the Applicant to shift the tower location on the subject property located at 9300 Mill Station Road in Sonoma County, and to restore the permanent generator that was previously removed from the proposal, as requested by the BZA. This letter also summarizes existing information already in the administrative record to address the questions raised by the BZA at the end of the May 23rd hearing.

I. Summary

The Application should be approved, with the conditions recommended by County staff ("Staff"), because substantial evidence in the record establishes:

1. There is a significant gap in T-Mobile's service coverage to be served by the proposed facility. As explained in T-Mobile's Coverage Objective and Engineering Justification, prepared by T-Mobile's radio frequency ("RF") engineer, federal courts have recognized for over 15 years that a "significant gap" can exist based on inadequate in-building coverage (see discussion below). Figure A (pg. 7) of the Coverage Objective and Engineering justification clearly demonstrates that there is a lack of reliable in-building signal strength in the desired coverage area. Figure B (pg. 8) clearly shows the proposed facility (70'

structure height; 65' antenna tip height) will provide new, reliable in-building signal strength in the significant gap.¹

2. The proposed facility must be located at a certain height and in a certain area in order to provide acceptable quality in-building service in the significant gap. In an effort to work in good faith, the Applicant has already agreed to reduce the original tower height by 10' (from 80' to 70').
3. Applicant's application meets all design and location requirements of the Sonoma County Zoning Code ("SCZC") for an intermediate freestanding telecommunications facility in a Diverse Agriculture ("DA") zoning district. Under the County's code, there is no requirement for an Applicant to demonstrate a service need or a significant gap in coverage for an intermediate facility in the DA district.
4. The proposed facility, as designed, is compatible with the surrounding area and is the least intrusive means to provide service in the desired coverage area, under the County code's preferences and siting requirements. To date, the Applicant has provided four different stealth design options for the BZA's review and consideration.
5. Under the federal Telecommunications Act of 1996 and federal cases interpreting the Act, the facility is the least intrusive means for T-Mobile to provide acceptable quality service within the significant gap in coverage, and the County would have the effect of prohibiting T-Mobile's ability to provide high-quality, reliable in-building service, including T-Mobile's new home internet service, if the Application is denied.

II. Response to BZA

BZA Request to Shift Tower Location

In response to the BZA's request at the May 23rd hearing, the Applicant promptly contacted the property owner in good faith to inquire about the feasibility of shifting the tower location further west, toward the rear portion of the subject property. The property

¹ **Reliable Coverage:** Green represents minimum signal strength of -100dBm, T-Mobile's design criteria for reliable in-building residential voice coverage at 2100 MHz. This signal strength is required for customers to take advantage of T-Mobile's Home Internet services; **Marginal Coverage:** Yellow represents minimum signal strength of -115dBm, but less than -100dBm, T-Mobile's design criteria for in-vehicle coverage at 2100 MHz. Yellow represents in-vehicle coverage where T-Mobile customers are unable to access high speed internet indoors. Customers are unable to access T-Mobile's Home Internet services with this signal strength. (See pg. 13 of Coverage Objective and Engineering Justification).

owner informed the Applicant that he will not agree to move the proposed tower location further back on his property, under any circumstances, due to future plans for the property (see **Attachment 1- Letter from Garth B. Harding**).

As a result, shifting the tower location on site, as requested by the BZA, is not an available option and therefore is not a feasible alternative for Vertical Bridge or T-Mobile. As advised by County counsel in a July 27, 2023, memorandum, the Application may not be denied based on theoretical alternatives, the BZA decision must be supported by articulated findings, and the findings must be supported by substantial evidence identified in the record before the BZA.

The BZA requested the Applicant to shift the tower location to comply with SCZC Section 26-88-130(a)(3)(ii):

Facility towers, antennas and other structures and equipment shall be located, designed, and screened to blend with the existing natural or built surroundings so as to minimize visual impacts and to achieve compatibility with neighboring residences and the character of the community to the extent feasible considering the technological requirements of the proposed telecommunication service (emphasis added).

The proposed facility complies with all siting and design criteria under the County's code. The facility exceeds all setback requirements, is well below the maximum height allowance for an intermediate facility and includes a stealth design. In fact, four different stealth designs have been proposed to blend with the surrounding agricultural and rural residential neighborhood character, and the facility height has been reduced by 10' from the original height. The Applicant has worked in good faith to address all concerns raised by the BZA and community members to the maximum extent technically feasible and available. Not a single alternative that is available, technically feasible, and less intrusive than the Applicant's proposed facility to address T-Mobile's coverage gap has been provided by the County.

Emergency Back-Up Generator

The emergency back-up generator was removed from the original project proposal in response to concerns raised by the BZA and community members at the July 23, 2023, BZA hearing. While recognizing the importance of such backup power systems, the Applicant agreed to remove the permanent generator from the proposal in this specific circumstance to respond to the concerns raised.

At the May 23rd hearing, the BZA requested that the generator be added back to the project proposal. As a result, the applicant has reinstated the generator as requested (see

Attachment 2 – Site Plans). Applicant's generator will comply with Table NE2 of the Noise Element of the General Plan. The March 23, 2023, Staff Report confirmed the compliance of the generator, which was proposed in a substantially similar location within the project's fenced lease area. Applicant will again affirm compliance for the final generator location within the lease area, which depends on the design alternative approved by the BZA, as part of the Building Permit application.

T-Mobile's Significant Gap In In-Building Service Coverage

The BZA raised a number of questions at the end of the hearing regarding T-Mobile's significant gap in reliable in-building coverage.

Under the County's Code, there is no requirement to demonstrate a service need for an intermediate freestanding facility in the DA district. The Code's requirement to provide an alternatives analysis, which includes "identification of any existing service gaps in the proposed local area [...]" is required for intermediate freestanding facilities only in certain zones, not for the proposed location.² Even if the criteria for an alternatives analysis requiring demonstration of a service gap did apply to this project (which it does not), T-Mobile has provided evidence in the administrative record demonstrating a significant coverage gap in the proposed coverage area as recognized by federal law.

Under federal law, the Telecom Act prohibits a local jurisdiction from taking any action on a wireless siting permit that "prohibit[s] or [has] the effect of prohibiting the provision of personal wireless services."³ According to the Federal Communications Commission ("FCC") Order adopted in September 2018,⁴ a local jurisdiction's action has the effect of prohibiting the provision of wireless services when it "materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."⁵ Under the FCC Order, an applicant need not prove it has a significant gap in coverage; it may demonstrate the need for a new wireless facility in terms of adding capacity, updating new technologies, introducing new services and/or maintaining high quality service.⁶

² An alternatives analysis is required for major freestanding facilities in all districts and for intermediate freestanding facilities in the AR, RR, R1, R2, R3, and PC districts with a UR or RR land use designation. Sec. 26-88-130(a)(3)(xiv). The proposed facility is an intermediate facility in the DA district.

³ 47 U.S.C. § 332(c)(7)(B)(i)(II).

⁴ *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133 (rel. Sept. 27, 2018); 83 Fed. Reg. 51867 (Oct. 15, 2018), *affirmed in part and vacated in part*, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 594 U.S. ___, 141 S.Ct. 2855 (June 28, 2021)(No. 20-1354) ("FCC Order").

⁵ *Id.* at ¶ 35.

⁶ *Id.* at ¶¶ 34-42.

While an applicant is no longer required to show a significant gap in service coverage, in the Ninth Circuit, a local jurisdiction clearly violates section 332(c)(7)(B)(i)(II) when it prevents a wireless carrier from using the least intrusive means to fill a significant gap in service coverage. *T-Mobile U.S.A., Inc. v. City of Anacortes*, 572 F.3d 987, 988 (9th Cir. 2009).

Reliable in-building coverage is now a necessity and the expectation of most communities. Consistent with the abandonment of land line telephones and reliance on only wireless communications, federal courts now recognize that a “significant gap” can exist based on inadequate in-building coverage.⁷ Similarly, in a 2021 case regarding a proposed Verizon tower in Los Angeles, in which the city “contend[ed] Verizon cannot establish a significant gap in its coverage because the evidence in the record establishes Verizon’s existing network provides reliable outdoor and invehicle coverage for traditional voice, text messaging, and email services throughout the entire coverage area,” the court held instead that the Telecom Act “also prevents the City from effectively prohibiting Verizon from closing a significant gap in its 4G LTE services.”⁸ There, Verizon had also provided evidence of an in-building coverage gap. Notably, the court observed that the city provided no legal authority that “the [Telecom Act] does not also prevent the prohibition of other services including high-speed internet.”⁹ These cases collectively support the argument that in-building service coverage gaps constitute a significant gap in service.

The Applicant has demonstrated that T-Mobile has a significant coverage gap in the vicinity of the proposed facility and has demonstrated the need to provide more robust wireless services by improving its existing wireless network in the desired coverage area. There is no evidence in the record for any alternative location in the desired coverage area that is: (a) available for leasing to the Applicant, (b) technologically feasible to provide service in the significant gap in coverage, and (c) less intrusive than the Applicant’s proposed facility.

The application materials, the staff recommendation and analysis, and the evidence in the record demonstrates that the Applicant has met the burden of proving that the project complies with all required approval criteria under the County code. For these reasons, the Applicant respectfully requests the BZA to adhere to the parameters of review under the County’s code and federal law and approve the Application with the conditions of approval recommended by County staff.

⁷ See, e.g., *T-Mobile Central, LLC v. Unified Government of Wyandotte County/Kansas City*, 528 F. Supp. 2d 1128, 1168-69 (D.Kan. 2007), *affirmed in part*, 546 F.3d 1299 (10th Cir. 2008); *MetroPCS, Inc. v. City and County of San Francisco*, 2006 WL 1699580, *10-11 (N.D. Cal. 2006).

⁸ *L. A. SMSA Ltd. Partnership v. City of Los Angeles*, 2:16-cv-04954-FLA (SKx) (C.D. Cal. May 24, 2021). Applicant has provided a copy of this case to County Counsel.

⁹ *Id.*

June 7, 2024
Page 6

Sincerely,

Hannah Borris

Hannah Borris
Wireless Policy Group

Enclosures.: Attachment 1 – Letter from Garth B. Harding
Attachment 2 – Site Plans

Cc: Peter Kaljian, Planner I
Ivan Jimenez, Deputy County Counsel

ATTACHMENT 1

May 30, 2024

Vertical Bridge
Brandon St. Michel
750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487

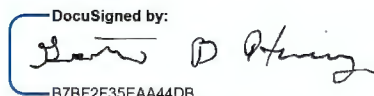
Via Email: brandon.stmichel@verticalbridge.com

Dear Mr. St. Michel,

I am writing to confirm my recent conversation with your authorized agent, Bill Lewis of Assurance Development. Please accept this letter as formal confirmation that I will not agree to move the proposed tower location further back on my property than the currently agreed-upon leasehold boundaries. The current tower location was agreed to so as not to interfere with my future plans for the property, and I am not willing to reconsider a different location under any circumstances.

I appreciate your understanding regarding this matter, and I look forward to improved wireless coverage in the neighborhood.

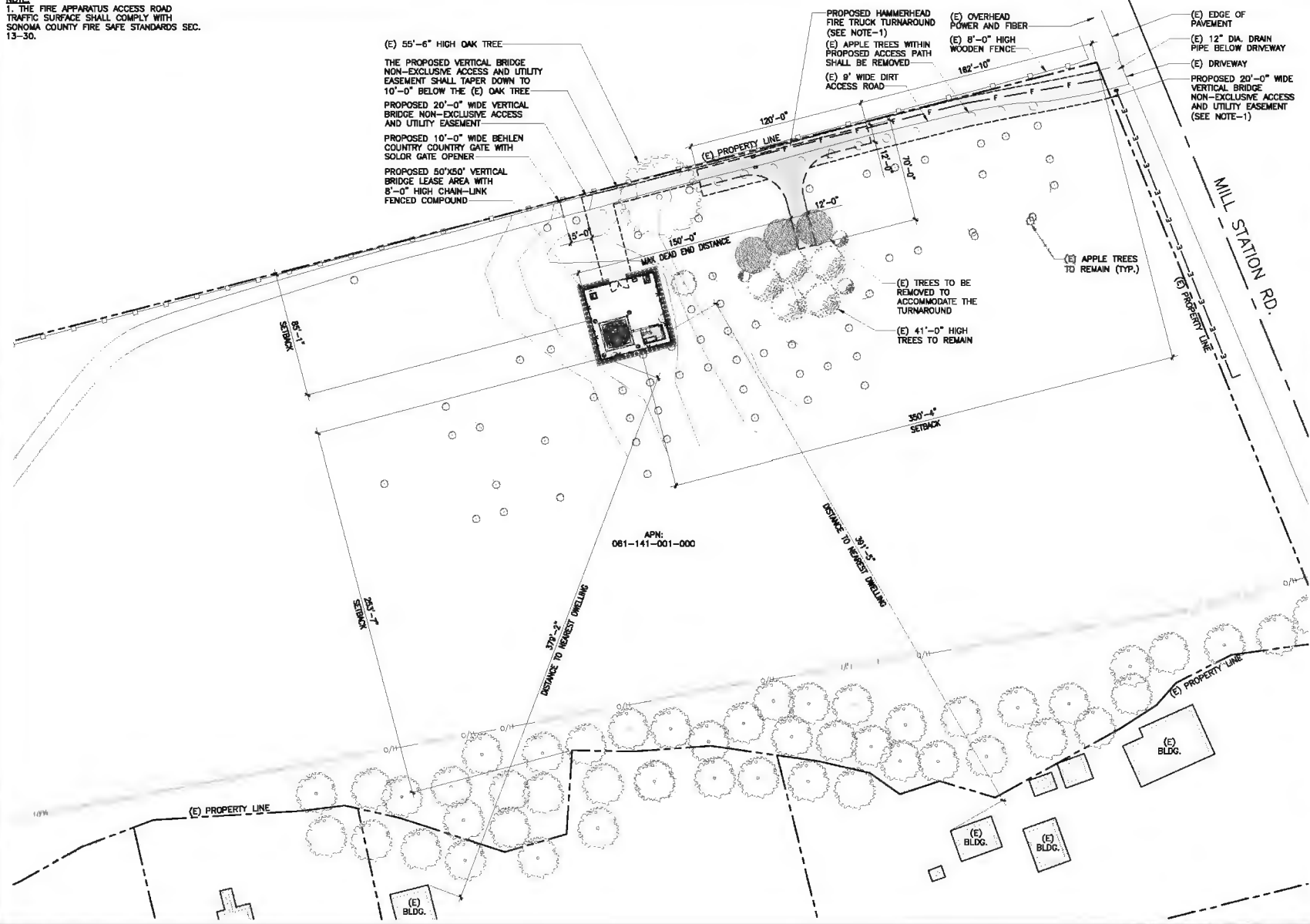
Sincerely,

DocuSigned by:

B7BF2F35EAA44DB...

Garth B. Harding
9300 Mill Station Rd.
Sebastopol, CA 95472

Cc: Bill Lewis

NOTE:
1. THE FIRE APPARATUS ACCESS ROAD TRAFFIC SURFACE SHALL COMPLY WITH SONOMA COUNTY FIRE SAFE STANDARDS SEC. 13-30.



CLIENT

verticalbridge

750 PARK OF COMMERCE DR.
SUITE 200 | BOCA RATON, FL | 33487
561.848.6367

SITE ACQUISITION

AD
ASSURANCE
DEVELOPMENT

1486 HUNTINGTON DR. | SUITE 305
SOUTH PASADENA, CA | 91030
626.786.5079

ID	EXHIBIT	JR	28/04/24
C	EXHIBIT	JR	03/04/23
B	EXHIBIT	JR	10/07/23
A	EXHIBIT	APP	11/04/23
REV	SUBMITTAL / REVISION	BY	DATE

DRAWN: JR
DESIGNED: APP
CHECKED: BL

PROJECT NUMBER: US-CA-7226

PROJECT TITLE:
**US-CA-7225
BA90016A
RAGLE RANCH**
9300 MILL STATION RD.
SEBASTOPOLE, CA 95472

ENGINEER STAMP:

DRAWING TITLE:
**EXHIBIT B -
SITE PLAN**

DRAWING SCALE:
AS NOTED

DATE:
07/31/23

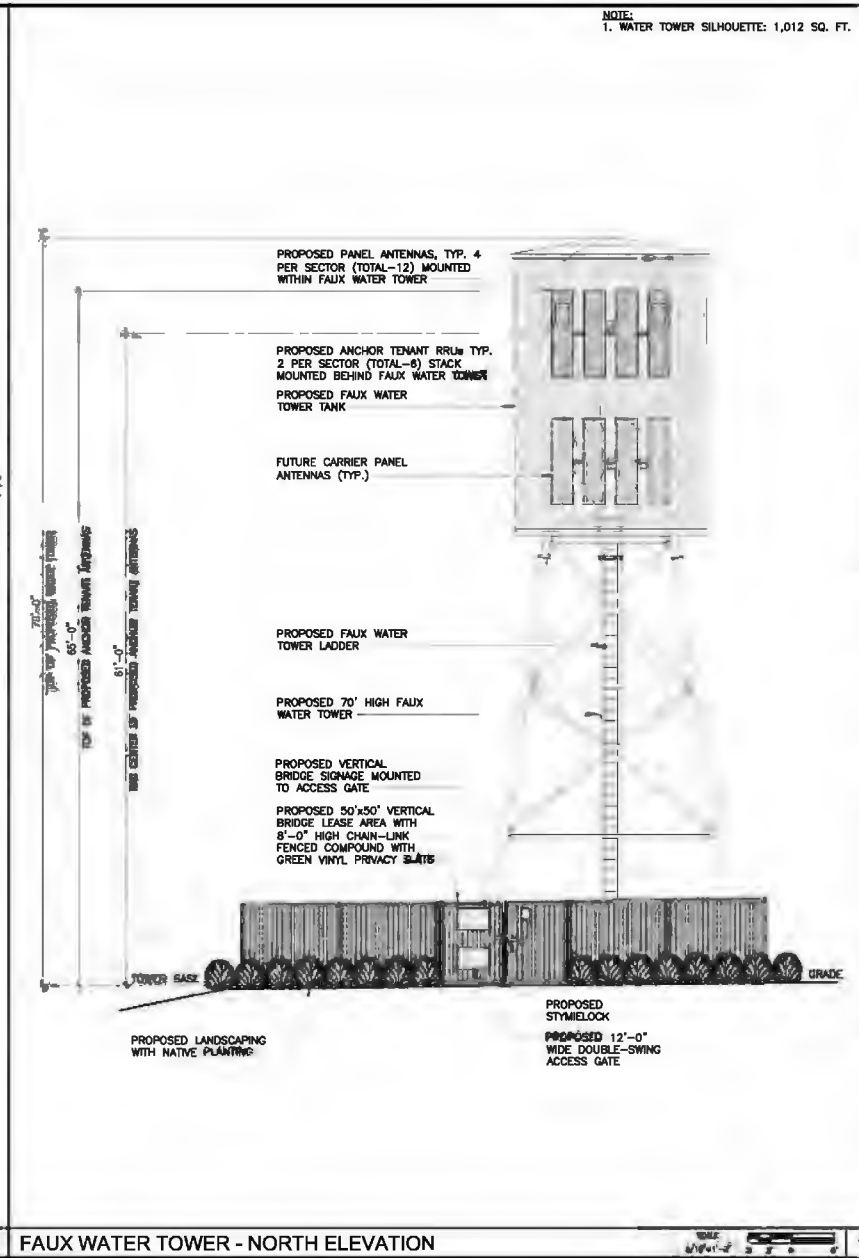
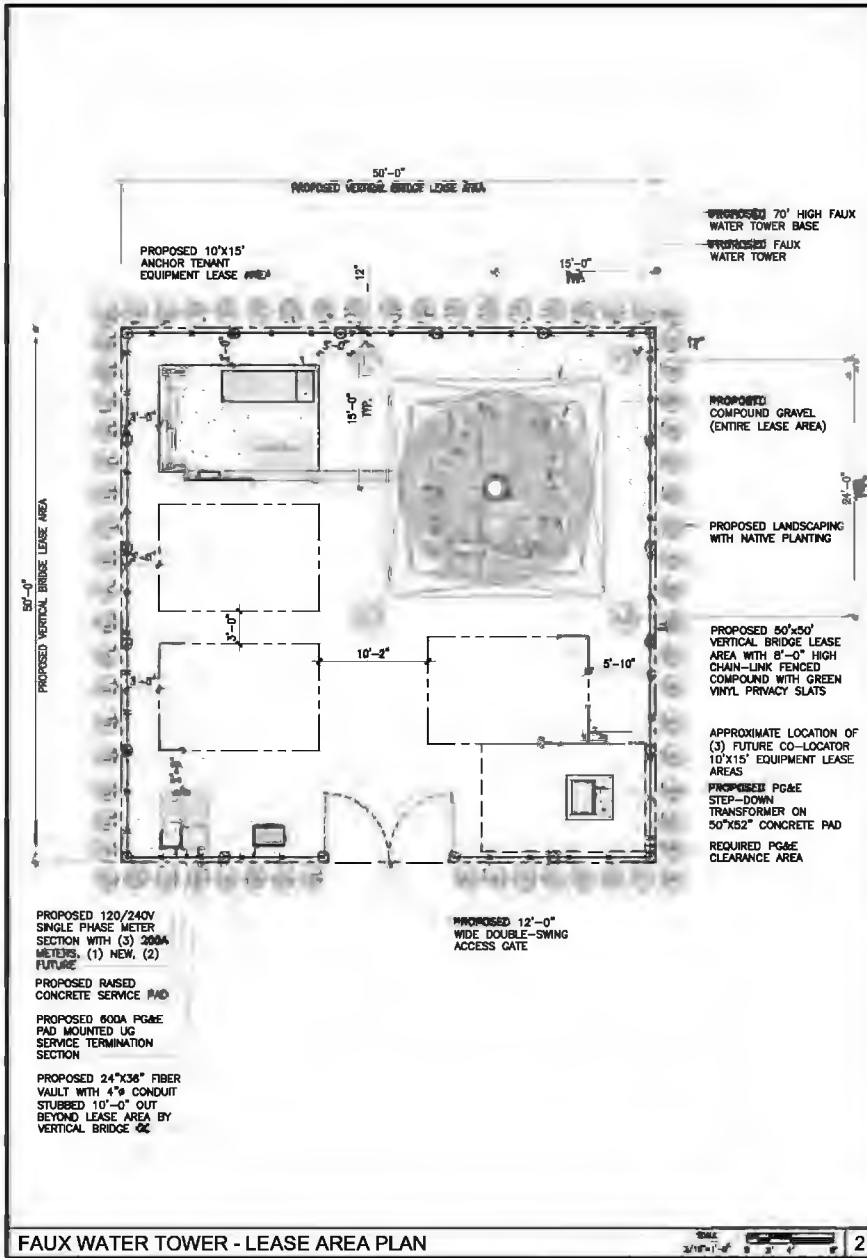
EXHIBIT

UNAUTHORIZED ALTERATION OR ADDITION TO THIS DOCUMENT IS A VIOLATION OF APPLICABLE STATE AND / OR LOCAL LAWS.

DRAWING NUMBER:
EX-B1

EXHIBIT B - SITE PLAN





NOTE:
1. WATER TOWER SILHOUETTE: 1,012 SQ. FT.

CLIENT

verticalbridge

760 PARK OF COMMERCE DR.
SUITE 200 | BOCA RATON, FL | 33487
561.848.6367

SITE ACQUISITION

AD
ASSURANCE
DEVELOPMENT

1486 HUNTINGTON DR. | SUITE 305
SOUTH PASADENA, CA | 91030
626.785.5079

DATE	DESCRIPTION	BY	DATE
07/31/23	ISSUED FOR PERMIT	AP	07/31/23
07/31/23	REVISION	AP	07/31/23
07/31/23	REVISION	AP	07/31/23
07/31/23	REVISION	AP	07/31/23
07/31/23	REVISION	AP	07/31/23

DRAWN: JR
DESIGNED: AP
CHECKED: BL

PROJECT NUMBER: US-CA-7226

PROJECT TITLE:
**US-CA-7225
BA90016A
RAGLE RANCH**
9300 MILL STATION RD.
SEBASTOPOLE, CA 95472

ENGINEER STAMP:

DRAWING TITLE:
FAUX WATER TOWER

DRAWING SCALE:
AS NOTED

DATE:
07/31/23

EXHIBIT

UNAUTHORIZED ALTERATION OR ADDITION TO
THIS DOCUMENT IS A VIOLATION OF
APPLICABLE STATE AND / OR LOCAL LAWS

DRAWING NUMBER:
EX-B2

FAUX WATER TOWER - LEASE AREA PLAN

FAUX WATER TOWER - NORTH ELEVATION



8/23/2024

Peter Kaljian, Planner I
Sonoma County, Permit Sonoma
2550 Ventura Avenue
Santa Rosa, CA 95403

VIA EMAIL: peter.kaljian@sonoma-county.org

**RE: UPE22-0051 (70' Intermediate Freestanding Telecommunication Facility)
October 8, 2024, Board of Supervisors' Appeal Hearing**

Dear Mr. Kaljian:

On behalf of the Applicant VB BTS II, LLC ("Vertical Bridge") and Co-Applicant T-Mobile West LLC ("T-Mobile") (collectively, "Applicants"), we submit this letter to provide additional information regarding their application for Conditional Use Permit (UPE22-0051) ("Application"), which proposed a 70-foot Intermediate Freestanding Telecommunication Facility ("IFTF" or "Proposed Facility") at 9300 Mill Station Road, Sebastopol, in unincorporated Sonoma County ("County").

As you are aware, the Application was denied by the Board of Zoning Adjustments ("BZA") on June 13, 2024. Applicants filed an appeal of the BZA's decision on June 20, 2024, on the basis that there is a lack of substantial evidence to support the findings in Resolution 24-05, the BZA's findings are contrary to the applicable Sonoma County Municipal Code ("SCMC") requirements for an IFTF in the Diverse Agriculture ("DA") district, and the BZA's decision is contrary to applicable law.

This letter addresses the merits of the Application and responds to the BZA's findings for denial, demonstrating that the Proposed Facility complies with all applicable standards.

Merits of the Application

The County's General Plan Policy PF-2u provides that the County shall "[r]eview proposals for public and private telecommunication facilities for consistency with General Plan policies and adopted siting and design criteria. In order for a public

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(fax) 206.219.6717

telecommunication facility to be found consistent with this plan, it must meet the standards and siting and design criteria of the applicable zoning district.”¹

As documented in all previous County staff reports for this Application, the Proposed Facility fully complies with all applicable standards and siting design criteria for an IFTF in the DA district. The Proposed Facility exceeds all setback requirements and is well below the maximum height allowed for an IFTF. Moreover, the Application includes multiple stealth design options, including a fully stealth faux water tank specifically requested by the BZA, to minimize visual impacts to the surrounding community.

In addition to meeting all regulatory requirements, the Proposed Facility addresses a critical service need in the area. T-Mobile’s service objective for the Proposed Facility is to provide in-building 4G/5G wireless coverage within a rural area northwest of Sebastopol, in the vicinity of Mill Station Road and Ferguson Road, including surrounding residential areas presently not adequately served by T-Mobile’s network. This includes an area north of (and including) Occidental Road and areas outside the reach of adjacent T-Mobile facilities. This improvement is expected to deliver reliable in-building service to an estimated 994 residents in the Sebastopol area of Sonoma County.²

Wireless communication facilities are essential infrastructure. Currently, 76% of adults and 86.8% of children live in wireless-only households,³ and more than 87% of 911 calls in California are made from a wireless device.⁴ Improved wireless communication services not only enhance emergency response capabilities but also expand access to education, healthcare, and social and government services. To further support community safety, Vertical Bridge has offered complimentary collocation space on the Proposed Facility to Sebastopol Fire and the Sonoma County Sheriff’s Department.

The above factors underscore the vital role that the Proposed Facility will play in enhancing public safety, essential services, and overall T-Mobile network quality within the community.

Response to the BZA’s Findings for Denial

The BZA provided five findings for denial in Resolution 24-05. The findings are provided below in ***bold italicized text*** and Applicants’ response is provided below each finding.

¹ Sonoma County General Plan, Public Facilities and Services Element, page PF-17.

² T-Mobile Coverage Objective & Engineering Justification, slide 8, Chris Cubanske, February 28, 2024.

³ CDC Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2023 (released June 2024)

⁴ [https://www.911.gov/issues/911-stats-and data/](https://www.911.gov/issues/911-stats-and-data/)

BZA Finding 1

- 1. Based on substantial evidence in the record, including coverage maps submitted by the applicant, the Board of Zoning Adjustments finds that a significant gap in service coverage does not exist.***

There is a significant gap in T-Mobile's service coverage to be served by the Proposed Facility. As explained in T-Mobile's Coverage Objective and Engineering Justification,⁵ prepared by T-Mobile's radio frequency ("RF") engineer, federal courts have recognized for over 15 years that a "significant gap" can exist based on inadequate in-building coverage. Figure A (pg. 7) of the Coverage Objective and Engineering justification clearly demonstrates that there is a lack of reliable in-building signal strength in the desired coverage area. Figure B (pg. 8) clearly shows the proposed facility (70' structure height; 65' antenna tip height) will provide new, reliable in-building signal strength in the significant gap. As noted above, and further demonstrating the significance of the gap, the coverage improvement is expected to deliver reliable in-building service to an estimated 994 additional residents in the Sebastopol area of Sonoma County.

Under the County's Code, there is no requirement to demonstrate a service need for an IFTF in the DA district. The Code's requirement to provide an alternatives analysis, which includes "identification of any existing service gaps in the proposed local area [...]", is required for intermediate freestanding facilities ***only in certain zones***, not for the proposed location in the DA district.⁶ Even if the criteria for an alternatives analysis requiring demonstration of a service gap did apply to this project (which it does not), T-Mobile has provided substantial evidence in the administrative record demonstrating a significant coverage gap in the proposed coverage area as recognized by federal law. The only evidence in the record to the contrary is from testimony from community members citing T-Mobile's on-line coverage maps. As explained by T-Mobile's RF engineer on page 13 of the Coverage Objective & Engineering Justification,⁷ T-Mobile's online coverage map approximates anticipated ***outdoor coverage*** and does not guarantee service availability.

Additionally, some community members argued that their existing wireless service is acceptable. However, such statements are anecdotal and do not constitute substantial evidence. Moreover, these comments did not specify whether the service in question was provided by T-Mobile, meaning the experiences shared are likely irrelevant to the specific coverage gap that the Proposed Facility is intended to address.

⁵ T-Mobile Coverage Objective & Engineering Justification, Chris Cubanske, February 28, 2024

⁶ An alternatives analysis is required for major freestanding facilities in all districts and for intermediate freestanding facilities in the AR, RR, R1, R2, R3, and PC districts with a UR or RR land use designation. Sec. 26-88-130(a)(3)(xiv). The proposed facility is an intermediate facility in the DA district.

⁷ T-Mobile Coverage Objective & Engineering Justification, Chris Cubanske, February 28, 2024

Under federal law, the Telecom Act prohibits a local jurisdiction from taking any action on a wireless siting permit that “prohibit[s] or [has] the effect of prohibiting the provision of personal wireless services.”⁸ According to the Federal Communications Commission (“FCC”) Order adopted in September 2018,⁹ a local jurisdiction’s action has the effect of prohibiting the provision of wireless services when it “materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”¹⁰ Under the FCC Order, an applicant need not prove it has a significant gap in coverage; it may demonstrate the need for a new wireless facility in terms of adding capacity, updating new technologies, introducing new services and/or maintaining high quality service.¹¹

While an applicant is no longer required to show a significant gap in service coverage, in the Ninth Circuit, a local jurisdiction clearly violates section 332(c)(7)(B)(i)(II) when it prevents a wireless carrier from using the least intrusive means to fill a significant gap in service coverage. *T-Mobile U.S.A., Inc. v. City of Anacortes*, 572 F.3d 987, 988 (9th Cir. 2009).

T-Mobile has clearly demonstrated in the record that there is a significant gap in in-building service within the proposed coverage area, and federal courts recognize that a “significant gap” can exist based on inadequate in-building service coverage.¹² As explained in the County Counsel’s Memorandum to the BZA, dated July 27, 2023, if a provider identifies a significant gap in service coverage, and a comprehensive application is submitted, this is treated as prima facie evidence of a service gap. The BZA appears to have disregarded this guidance.

Additionally, the BZA erroneously applied the requirements of SCMC § 26-88-130(a)(3)(xiv), which are not applicable to the Proposed Facility. For these reasons, the BZA’s finding that a significant gap in service coverage does not exist is not only unsupported by the evidence but is also contrary to both County regulations and federal law.

BZA Finding 2

⁸ 47 U.S.C. § 332(c)(7)(B)(i)(II).

⁹ Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, WT Docket No. 17-79, WC Docket No. 17-84, FCC 18-133 (rel. Sept. 27, 2018); 83 Fed. Reg. 51867 (Oct. 15, 2018), affirmed in part and vacated in part, *City of Portland v. United States*, 969 F.3d 1020 (9th Cir. 2020), cert. denied, 594 U.S. ___, 141 S.Ct. 2855 (June 28, 2021)(No. 20-1354) (“FCC Order”).

¹⁰ *Id.* at ¶ 35.

¹¹ *Id.* at ¶¶ 34-42.

¹² See, e.g., *T-Mobile Central, LLC v. Unified Government of Wyandotte County/Kansas City*, 528 F. Supp. 2d 1128, 1168-69 (D.Kan. 2007), affirmed in part, 546 F.3d 1299 (10th Cir. 2008).

2. There is a feasible alternative that would provide service to areas currently without service compared to the proposed project, which was not convincingly shown to be unavailable and which the applicant did not show they made adequate efforts to secure.

As explained above, an alternatives analysis meeting the criteria of SCMC § 26-88-130(a)(3)(xiv) is not required for an intermediate freestanding facility in the DA zone with a DA land use designation.¹³ Despite not being required, the Applicant provided an analysis of other sites considered for the construction of a new freestanding facility. This analysis was included as part of the application to demonstrate that under federal law (in contrast to under the County's code) the Proposed Facility is the least intrusive means of meeting T-Mobile's coverage objectives for this site.

Once a wireless provider presents prima facie evidence of a significant gap and demonstrates that its proposal is the least intrusive means for closing that gap, the burden shifts to the local government to prove that an available, feasible, and less intrusive alternative exists.¹⁴ To meet this shifted burden, the opponents and/or the local government must show that another alternative is (a) available, (b) technologically feasible, and (c) less intrusive than the carrier's proposed gap solution.¹⁵ In this case, the BZA did not provide sufficient evidence to meet this burden.

The BZA's assertion that "there is a feasible alternative" is unsupported. As provided in the County Counsel Memorandum, theoretical alternatives cannot be relied upon to support a denial. The alternative location in question, located at 9845 Cherry Ridge Road, is not a feasible alternative because it is not available to the Applicants. The Applicants initially contacted the property owner via U.S. Postal Service ("USPS") mail on March 24, 2022, and as documented in the alternatives analysis on file, the property owner did not respond to Applicants' inquiries.

Applicants made further attempts to contact the property owner at both the listed mailing address on June 27, 2024, and at the situs address on July 24, 2024, via USPS certified mail. The letter sent to the situs address was subsequently returned as undeliverable. Despite these efforts, no response has been received. **See Attachment A – Certified Mail Receipts.** Applicants also attempted to contact the property owner via phone; however, the published phone number was not valid.

¹³ An alternatives analysis is required for major freestanding facilities in all districts and for intermediate freestanding facilities in the AR, RR, R1, R2, R3, and PC districts with a UR or RR land use designation. SCMC § 26-88-130(a)(3)(xiv).

¹⁴ See *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 995 (9th Cir. 2009) at 998-99.

¹⁵ *Id.*

Furthermore, Applicants submitted this Application to address a well-documented in-building service gap in *this location*.¹⁶ The evidence in the record, provided by Applicants, as detailed under Finding #1, clearly demonstrates that a significant gap in in-building coverage exists, which the Proposed Facility is designed to fill. The County does not have the authority or technical expertise to dictate or alter T-Mobile’s technical service objectives, including T-Mobile’s proposed service area.

For these reasons, the BZA’s finding that a feasible alternative exists is unsupported by the evidence and should not serve as a basis for denying the Application.

BZA Finding 3

- 3. The alternative site, identified by the applicant at 9845 Cherry Ridge Road, once analyzed, may provide better service with a less intrusive facility, compared to the proposed project.***

As stated previously, the County does not have the authority to dictate T-Mobile’s service objectives, including the location of T-Mobile’s proposed service area, nor the technical expertise to determine what may constitute “better service;” nor may it rely on theoretical alternatives. Additionally, there is nothing in the record to support the finding that a facility located at 9845 Cherry Ridge Road would be a “less intrusive” facility.

Importantly, before an alternative may be found “less intrusive” it must first be available and feasible. The property at 9845 Cherry Ridge Road is not available, so there is no basis to evaluate its potential relative intrusiveness.

Even if the property on Cherry Ridge Road were available, the Proposed Facility at 9300 Mill Station Road is less intrusive than a facility would be at the Cherry Ridge alternative because there is a substantial tree line on the southern property line, with trees measuring up to 83 feet in height.¹⁷ This tree line serves as a significant landscape buffer to the adjacent rural residential parcels to the south, effectively screening the Proposed Facility from view from the residential neighborhood to the south.

The Cherry Ridge parcel, on the other hand, lacks any tall trees or other significant landscape elements to screen a facility from surrounding view. A facility at this location would, in fact, be much more visible to the surrounding neighborhood, and therefore would not be less intrusive. Please refer to **Attachment B – Comparative Site Map** for further details.

¹⁶ Please refer to the T-Mobile Coverage Objective & Engineering Justification, slides 2,5,7 & 8, Chris Cubanske, February 28, 2024, detailing the specific coverage objective for the Proposed Facility.

¹⁷ Please refer to the Site Plan, sheet A-1, in Zoning Drawings version 2, dated June 6, 2023.

Additionally, both parcels are zoned DA; therefore, there is no differentiation as a matter of zoning. There is no provision in the County Code that suggests the Cherry Ridge Parcel is more suitable or preferable than the proposed location. On the contrary, the visual compatibility criteria outlined in SCMC § 26-88-130(a)(3)(ii) would guide an applicant toward the proposed location over the Cherry Ridge alternative, where natural screening elements are available.

The BZA's finding that a less intrusive alternative exists is unsupported by the evidence and should not serve as a basis for denying the Application.

BZA Findings 4-5

4. *The project is inconsistent with the Zoning Code criteria under Sec. 26-88-130 (a) 3. ii which states all intermediate freestanding telecommunication facilities, towers, antennas and other structures and equipment shall be located, designed, and screened to blend with the existing natural or built surroundings so as to minimize visual impacts and to achieve compatibility with neighboring residences and the character of the community to the extent feasible considering the technological requirements of the proposed telecommunication service.*
 - a. *Based on Permit Sonoma's Visual Assessment Guidelines, the Board of Zoning Adjustments finds the project will result in significant visual impacts that cannot be mitigated. Specifically, based on evidence in the record including public testimony and the Visual Assessment Guidelines, the Board of Zoning Adjustments finds the project is visually "Dominant" which is characterized as project elements are strong – they stand out against the setting and attract attention away from the surrounding landscape. Form, line, color, texture, and night lighting contrast with existing elements in the surrounding landscape. The proposed 70-foot-tall facility is primarily surrounded by deciduous apple, willow, and oak trees of substantially less height with heights ranging from approximately 15 feet to 55 feet; therefore the 70-foot facility would attract attention away from the surrounding landscape. For these reasons, the height of the proposed facility is inconsistent with the surrounding neighboring residences and the character of the community which is rural residential and agricultural.*
5. *The project as proposed may be detrimental to the health, safety, peace and comfort or general welfare of the persons residing or working in the neighborhood, or to the general welfare of the area in particular:*

- a. The Board of Zoning Adjustments finds that, based on public testimony, the project will result in significant visual impacts that cannot be mitigated.***

Wireless communication facilities (“WCFs”) have a unique need for height that other traditional land uses do not. As the overwhelming majority of California households now rely on wireless as their primary means of communication, WCFs must be located within the communities they are intended to serve, including agricultural and rural residential areas. Due to this unique height requirement, WCFs will inevitably be visible. However, these visual impacts are mitigated through stealth design and best siting practices, such as utilization of natural landscape buffers. Applicants provided four stealth design options to mitigate visual impacts, including a fully stealth water tank where the antennas would be entirely screened from view. Like other essential infrastructure, such as utility poles or towers, the height of WCFs will always exceed that of surrounding residential structures.

SCMC § 26-88-130(a)(3)(ii) explicitly acknowledges the technical limitations of WCFs, recognizing that location, design, and screening techniques must accommodate the technological requirements of these facilities. The Code permits intermediate facilities to reach up to 130 feet in height; in contrast, the Proposed Facility is only 70 feet tall, significantly below the maximum allowable height. This 130-foot height limit indicates that the Code has already considered and accepted the potential visual impact associated with the necessary height of such facilities.

Applicants agree with County Staff, who are experts in implementing the Code, that the visual analysis determination for the Proposed Facility, through the use of stealth design, should be characterized as co-dominant, rather than dominant as asserted by the BZA. The stealth designs proposed include a monopine, a monoecalyptus, a windmill tower and a faux water tank, all of which are features commonly found in agricultural and rural settings. Furthermore, no tower lighting is proposed or required, which means there would be no impacts associated with "night lighting" as asserted in BZA Finding 4(a).

It appears that the BZA's findings here, are based, in part, on the homemade photo simulations submitted as part of public comments. These homemade photo simulations do not constitute credible evidence. They lack crucial information, such as the precise location from which the photos were taken, how the specific location of the tower was selected, or how the correct height of the proposed facility was ensured. Importantly, the “monopine” pictures provided in the public comment material do not reflect the standards to which Vertical Bridge constructs its monopines. The prominence of the antennas, the color, and the branch density are all inaccurately depicted. The reliance on homemade photo simulations, which lack the accuracy and credibility of professional assessments, undermines the validity of the BZA’s findings.

In contrast to the homemade photo simulations, professional photo simulations provided by the Applicants are prepared using computer modeling that incorporates precise data points to accurately reflect the existing features of the vicinity and the proposed tower. These professional simulations are accompanied by detailed vicinity maps that pinpoint the exact locations from which the photos were taken, ensuring verifiable accuracy and scale. This provides an accurate and credible basis for evaluating the visual impacts.

Additionally, Applicants have provided drone footage offering a 360-degree panoramic view from the proposed site's location at the proposed height. When viewed frame by frame, this footage demonstrates that the stealth facility would only be visible from the windows of two homes, effectively rebutting the unsupported claims made about visual impacts in written public comments and during public testimony. Please refer to **Attachment C - Drone Footage: Viewpoints and Visibility**.

Furthermore, the project as proposed, would not be detrimental to the health, safety, peace and comfort or general welfare of the persons residing or working in the neighborhood, or to the general welfare of the area. To the contrary, the Proposed Facility will contribute positively by enhancing reliable communication services, which are essential for emergency response and everyday connectivity. The Proposed Facility will comply with all relevant safety standards while providing significant benefits to the community by improving access to critical wireless services.

The Proposed Facility, as sited and designed, is fully consistent with SCMC § 26-88-130(a)(3)(ii) and its approval, as recommended by staff, is supported by substantial evidence in the record. In contrast, the BZA's findings are not supported by the facts and lack sufficient evidence to justify the denial.

Conclusion

Given the comprehensive evidence and detailed analysis presented, we respectfully request that the Planning Department recommend the Board of Supervisors reverse the BZA's decision and approve the project as proposed. The Proposed Facility is fully compliant with all relevant codes and regulations, and it will significantly benefit the community by enhancing critical wireless communication services while minimizing visual and environmental impacts.

Sincerely,

Hannah Boris

August 23, 2024
Page 10

Hannah Borris

Cc: Hannah Spencer, Supervising Planner
Ivan Jimenez, Deputy County Counsel

Encl: Attachments A- C

Attachment A – Certified Mail Receipts

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<input type="checkbox"/> Return Receipt (electronic)	\$	
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<input type="checkbox"/> Adult Signature Restricted Delivery	\$	
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Attachment B - Comparative Site Map



View From Top of 70' Tower – Looking West

Home #1



Property Owner's Home



View From Top of 70' Tower – Looking North

No Homes Visible



View From Top of 70' Tower – Looking East

Home #2



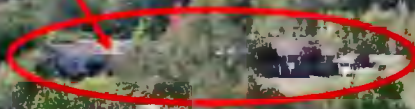
View From Top of 70' Tower – Looking South

No Homes Visible



View From Top of 70' Tower – Looking Southwest

Home #1



Property Owner's Home

