

UPE22-0051

*Appeal of BZA Denial of a 70 ft. intermediate freestanding telecommunications facility (“IFTF”) at 9300 Mill Station Rd.*

Sonoma County Board of Supervisors

October 8, 2024

Vertical Bridge & T-Mobile

# Application Timeline

- **Application Filed: Aug. 31, 2022**
  - 80' monopine proposed
- **BZA Hearing 1: March 23, 2023**
  - **Result:** Hearing continued
- **BZA Hearing 2: July 27, 2023**
  - Applicants reduced tower height by 10 ft. (from 80 ft. to 70 ft.)
  - Introduced unstealthed monopole design
  - **Result:** Hearing continued
- **BZA Hearing 3 : May 23, 2024**
  - Applicants introduced three new stealth design options (faux eucalyptus tree, water tank and windmill tower)
  - Analysis of shorter tower heights
  - Panoramic drone footage provided
  - Removed emergency backup generator
  - Added native landscaping around lease perimeter
  - Provided arborist report
  - **Result:** Hearing continued
- **BZA Hearing 4: June 13, 2024**
  - Added emergency backup generator back into project
  - Assessed feasibility of shifting tower location further back on the subject property; denied by property owner.
  - **Result:** BZA denied
- **Appeal Application Filed by Applicants: June 20, 2024**

# Summary

- **Complies with Code:** Proposed facility complies with Sonoma County (“County”) Code Criteria, as found by staff,<sup>1</sup> exceeds all setbacks requirements and at 70 ft. is well below the 130 ft. maximum height limit for IFTF.
- **Multiple design options proposed:** 4 stealth design options proposed (faux pine tree, eucalyptus tree, windmill tower & water tank) in response to concerns raised by the community and BZA.
- **Minimal visual impact:** Drone photos demonstrate *insignificant* visual impact to the residential neighborhood to the south. Water tank design offers a fully stealthed design option.
- **BZA erred in their decision:** BZA’s findings are contrary to the applicable County Code requirements for an IFTF in the Diverse Agriculture (“DA”) district, and the BZA’s decision is contrary to applicable law.

<sup>1</sup> See County staff reports dated March 23, 2023, July 27, 2023, May 23, 2024.

# Public Benefits of Proposed Site

- **Significant service coverage improvements:** The proposed facility will provide reliable in-building wireless coverage to an additional ~ 994 residents in a rural area of the County northwest of Sebastopol, in the vicinity of Mill Station Rd, Ferguson Rd, and surrounding residential areas.<sup>1</sup>
- **Critical infrastructure:**
  - 76% of adults and 86.8% of children live in wireless-only households.<sup>2</sup>
  - >87% of 911 calls in the state of California are wireless calls.<sup>3</sup>
- **Supports and furthers the goals of the Sonoma County Broadband Action Plan:** Expands the infrastructure necessary to support high-speed wireless broadband access, enhancing connectivity in areas of the County currently lacking sufficient service.
- **Support of First Responders & Local Organizations:** Vertical Bridge offered complimentary space on the facility to Sonoma County Sheriff's Department, Sebastopol Fire, & the North Bay Communications Cooperative.

<sup>1</sup> T-Mobile Coverage Objective & Engineering Justification, slide 8, Chris Cubanske, February 28, 2024.

<sup>2</sup> CDC Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2023 (released June 2024).

<sup>3</sup> <https://www.911.gov/issues/911-stats-and-data/>

# BZA Finding #1

- **BZA Finding 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.”**
  - **Demonstrated Coverage Gap:** T-Mobile has provided substantial evidence showing a significant gap in in-building service coverage.<sup>1</sup> Federal courts have long acknowledged that inadequate in-building coverage constitutes a significant gap.<sup>2</sup>
  - **Misapplication of Code Criteria:** The BZA incorrectly applied the alternative sites analysis requirements of SCMC § 26-88-130(a)(3)(xiv). These requirements apply only to major facilities or intermediate facilities in certain specified districts, but not in the DA district. An alternatives analysis including identification of “service gaps” is not required for IFTF in the DA district.<sup>3</sup> Even if these criteria did apply (which they do not), T-Mobile has provided substantial evidence of a significant coverage gap, as recognized by federal law.
  - **Legal Guidance Disregarded:** According to County Counsel’s memo (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 disregarded this guidance.
  - **Conclusion:** The BZA’s finding is not supported by the evidence and contradicts both County regulations and federal law.

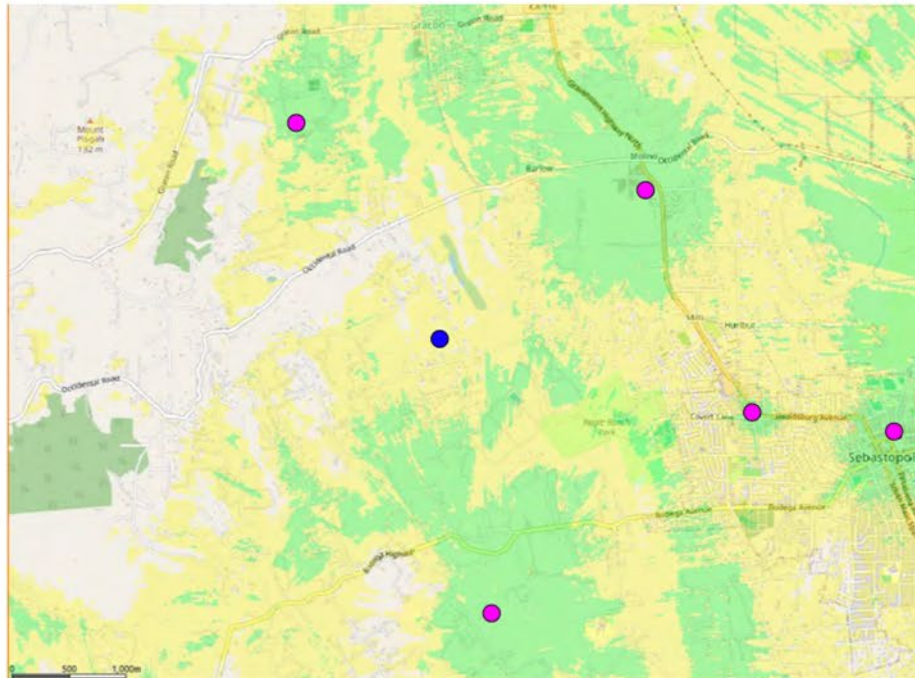
<sup>1</sup> T-Mobile Coverage Objective & Engineering Justification, Chris Cubanske, February 28, 2024.

<sup>2</sup> 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)

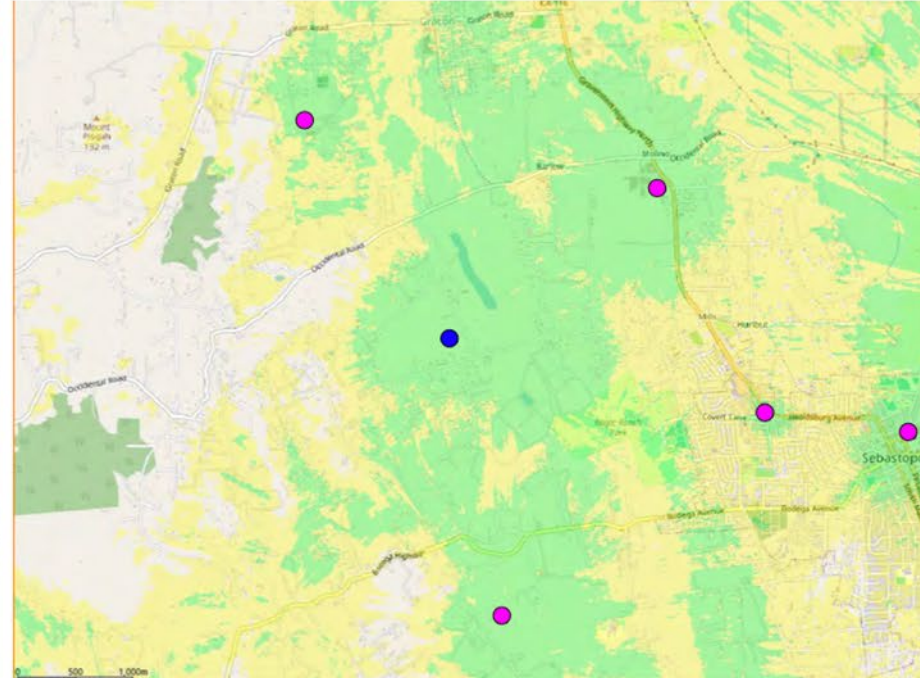
<sup>3</sup> An alternatives analysis is required for major freestanding facilities in all districts and for intermediate freestanding facilities in the AR, RR, R1, R2, R3, and PC districts with a UR or RR land use designation. Sec. 26-88-130(a)(3)(xiv). The proposed facility is an intermediate facility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

# T-Mobile's Coverage Gap & Service Objective

**FIGURE A – EXISTING SERVICE WITHOUT PROPOSED SITE**







**FIGURE B – SERVICE WITH PROPOSED SITE ON 70' STEALTH TOWER**



## Service objective

Providing in-building wireless coverage within a rural area northwest of Sebastopol, in the vicinity of Mill Station Road & Ferguson Road, and 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.

### MID BAND (AWS-2100 MHZ) LTE SERVICE MAP (RSRP)

	Reliable Coverage: $-100\text{dBm} < \text{RSRP}$
	Marginal Coverage: $-115\text{dBm} < \text{RSRP} < -100\text{dBm}$
	Existing T-Mobile Facilities
	Proposed Facility

Legend	Population - Reliable Coverage
Existing Sites w/o New Tower	2,896 Residents
Existing Sites + New 70' Tower	<b>3,890 Residents</b>
Net Increase	<b>+ 994 Residents</b>

- New 70' Stealth Tower with 65' Antenna Tip Height

Tower Height	Square Miles - Reliable Coverage
70' Tower	<b>2.14</b>

# BZA Finding #2

- **BZA Finding #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.”
  - **Analysis of Alternative Sites:** Although not required by the Code, Applicants provided an analysis of other sites considered for the new facility as part of the application. This analysis demonstrates that, under federal law, rather than County Code, the proposed facility is the least intrusive means to meet T-Mobile’s coverage objectives.
  - **Shifted Burden of Proof:** Once a wireless provider presents evidence of a significant gap and demonstrates that its proposal is the least intrusive means to close that gap, the burden shifts to the local government to prove the existence of an available, feasible, and less intrusive alternative.<sup>1</sup> In this case, the BZA did not meet this burden.
  - **Insufficient Evidence:** The BZA’s assertion of a “feasible alternative” is unsupported. As provided in the County Counsel Memorandum, theoretical alternatives cannot support a denial. The alternative site at 9845 Cherry Ridge Road is not feasible because it is not available. Applicants attempted to contact the property owner via certified mail on three separate occasions between 2022-2024 with no response.
  - **County's Authority:** The County lacks the authority and technical expertise to dictate or alter T-Mobile’s technical service objectives, including the proposed service area.
  - **Conclusion:** The BZA’s finding that a feasible alternative exists is unsupported by the evidence and does not serve as a valid basis for denying the application.

<sup>1</sup> See T-Mobile USA, Inc. v. City of Anacortes, 572 F.3d 987, 995 (9th Cir. 2009) at 998-99.

# BZA Finding 3

- **Finding #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.”
  - **Lack of Authority:** The County does not have the authority to dictate T-Mobile’s service objectives, including the location of the proposed service area, nor the technical expertise to determine what constitutes “better service.” The County also cannot rely on theoretical alternatives.
  - **No Evidence of Less Intrusiveness:** There is no evidence in the record or County Code to support the finding that a facility at 9845 Cherry Ridge Road would be “less intrusive.”
  - **Availability and Feasibility:** An alternative must first be available and feasible before being considered “less intrusive.” The property at 9845 Cherry Ridge Road is not available, so so there is no basis to evaluate its potential relative intrusiveness. Even if the alternative Cherry Ridge property was available (which it is not), the proposed location is less intrusive as demonstrated in the following map.
  - **Conclusion:** The BZA’s finding that a less intrusive alternative exists is unsupported by evidence and is not a valid basis for denying the application.



# Comparative Site Map



- **Natural Buffer:** Proposed location is less intrusive due to substantial tree line that serves as a natural landscape buffer between adjacent residential neighborhood.
- **Cherry Ridge Visibility:** Cherry Ridge alternative lacks any tall trees or other landscape elements and would be much more visible.
- **Zoning:** Both parcels are zoned DA; therefore, there is no differentiation as a matter of zoning.
- **Code Preference:** There is no provision in the Code that suggests the Cherry Ridge parcel is more preferred than the proposed location. 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.

# BZA Finding 4

**Finding #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 [...].”<sup>1</sup>

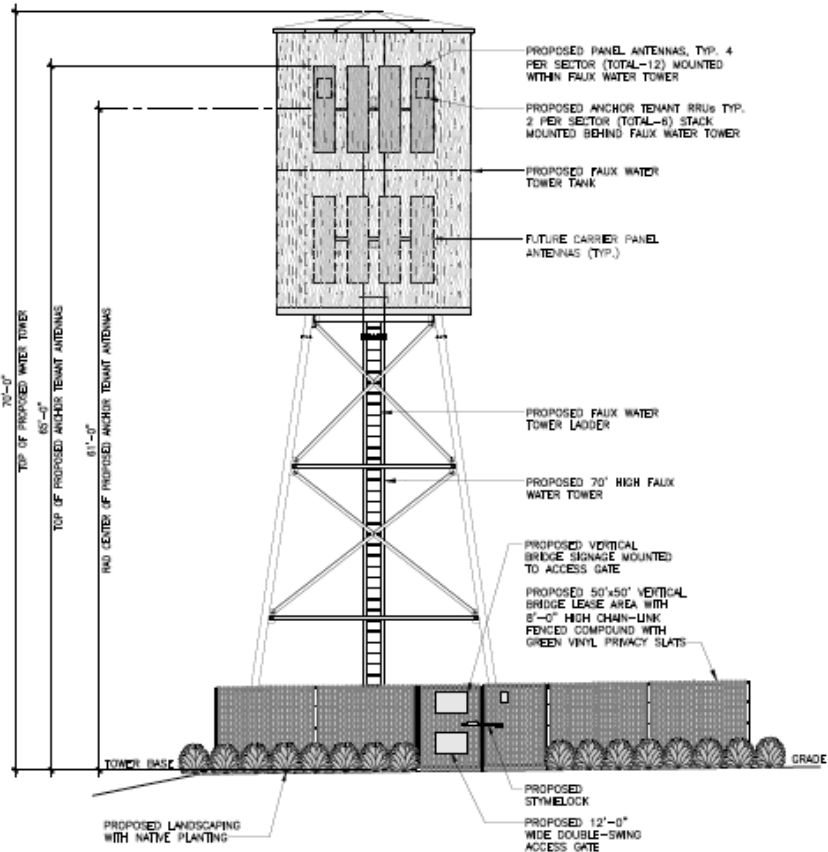
- **Mitigation Through Stealth Design:** The proposed facility incorporates stealth design options to minimize visual impacts.
- **Unsubstantiated Claims:** Homemade photo simulations submitted as public comments lack essential details, such as scale and precise location, making them non-credible and unverifiable. The “monopine” designs depicted do not align with Vertical Bridge’s design or construction standards.
- **Verifiable Visual Evidence:** Applicants have provided professional photo simulations, accompanied by detailed vicinity maps showing the exact locations from which the photos were taken, ensuring verifiable accuracy and scale. Drone footage demonstrates that the stealth facility would be visible from the windows of only two off-site homes, effectively countering unsupported claims about visual impacts.
- **Staff Findings:** Staff concluded that the project complies with Sec. 26-88-130(a)(3)(ii) and determined the project results in a less than significant impact.<sup>2</sup>
- **Conclusion:** The BZA’s findings are not supported by the facts and lack sufficient evidence to justify the denial.

<sup>1</sup> Due to length of the finding, Finding #4 has been abbreviated.

<sup>2</sup> See County staff reports dated March 23, 2023, July 27, 2023, May 23, 2024.

# Faux Water Tank – BZA Requested Stealth Design Option

SCALE: 1" = 10'-0"  
1. WATER TOWER SILHOUETTE, 1,012 SQ. FT.



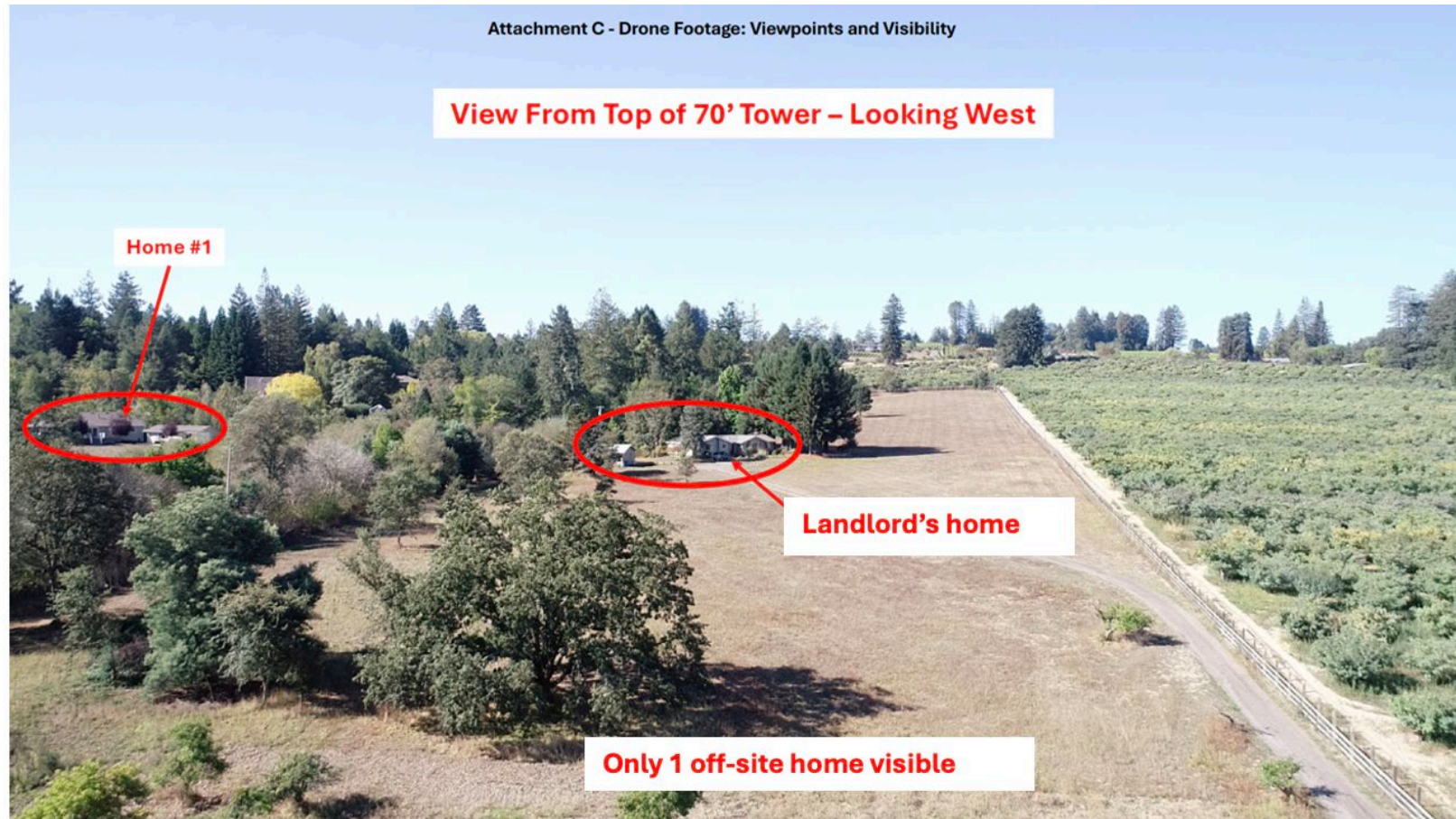
## PROPOSED



DISCLAIMER: THIS IS A RENDERING REPRESENTATION OF THE PROPOSED PROJECT ONLY

View looking west from Mill Station Rd.

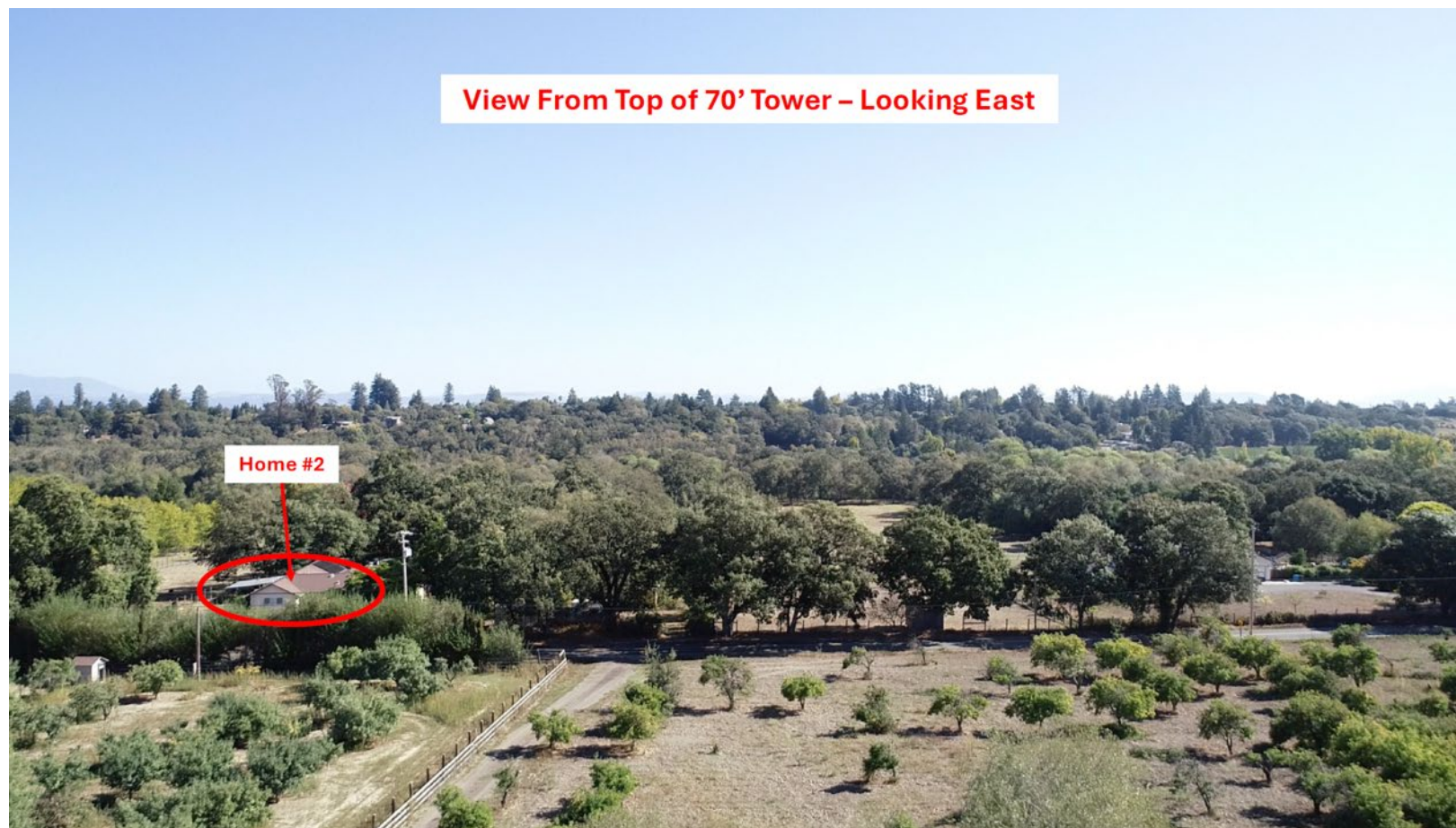
# Drone Footage



# Drone Footage



# Drone Footage



# Drone Footage



# BZA Finding 5

- **Finding #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: The Board of Zoning Adjustments finds that, based on public testimony, the project will result in significant visual impacts that cannot be mitigated.”
- **Compliance with Safety Standards:** The proposed facility will adhere to all relevant federal, state and local safety standards.
- **Community Benefits:** The facility will provide significant benefits by improving access to critical wireless services, enhancing communication reliability, and supporting emergency response capabilities.
- **No Significant Visual Impact:** Staff found there is no significant impact; only visible from 2 homes; mitigated through stealth design.
- **Support for Essential Services:** Reliable wireless communication is crucial for public safety, healthcare access, remote work, and education. The proposed facility will play a key role in meeting these needs for Sonoma County residents.
- **Conclusion:** The BZA’s findings are not supported by the facts and lack sufficient evidence to justify the denial.



# Requested Action

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- Given the comprehensive evidence in the record, we respectfully request that 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 services.