City of Palo Alto (ID # 10761)

City Council Staff Report

Report Type: Consent Calendar **Meeting Date: 1/27/2020**

Summary Title: Appeal by Crown Castle of Director's Denial of Six Wireless Communication Nodes (Crown Cluster 3)

Title: QUASI-JUDICIAL: Deny Appeal by Crown Castle and Uphold the Director's Decisions to Deny Wireless Communication Facilities on Wood Utility Poles in the Public Right of Way (For Lease to Verizon, Known as Crown Castle Cluster 3) in Six Locations Within the Downtown North Neighborhood [File 17PLN-00450], Zoned Public Facilities. Locations are Adjacent to These Zones/Addresses: RM-30 (205 Everett/251 Emerson, 243 Hawthorne and 258 Waverley); RM-D (NP) (482 Everett and 301 Bryant); RM-15 (201 High). The Project is Exempt From the Provisions of the California Environmental Quality Act (CEQA) in Accordance With Public Resources Code Section 21080

From: City Manager

Lead Department: Planning and Development Services

Recommendation

Staff recommends that the City Council deny the appeal from Crown Castle and uphold the Director of Planning and Development Services' (PDS) decision to deny six 'small cell' Wireless Communication Facility (WCF) nodes proposed in application #17PLN-00450 ("Crown Castle Cluster 3"). The attached Record of Land Use Action (Attachment A) is for denial of all six of the following WCF nodes on wood utility poles:

- Node 20, CPAU Pole #6474 (adjacent to 205 Everett Ave and also near 251 Emerson St)
- Node 21m1, CPAU Pole #6362 (adjacent to 301 Bryant St and also near 311 Everett Av)
- Node 22m2, CPAU Pole #6288 (adjacent to 258 Waverley St, replaced Node 22 near 386 Everett)
- Node 23, CPAU Pole #6350 (adjacent to 482 Everett Avenue)
- Node 24, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue)
- Node 32, CPAU Pole #6492 (adjacent to 201 High Street).

Executive Summary

On October 9, 2019, the Director denied the Crown Castle Cluster 3 applications for six 'small cell' WCF nodes in the Downtown North neighborhood (File 17PLN-00450) (Attachments B and

C). The proposed nodes consist of 4G-capable, top-mounted antennas and side-mounted equipment on six existing wood utility poles. The Director's Decision letter includes background information about the project applications and provides the detailed Findings for Denial.

On October 23, 2019, the City received one timely appeal from Crown Castle that challenges all six denial decisions (Attachment D). The appeal deadline was October 23, 2019, and no other appeals were filed.

The Crown Castle appeal (19-AP-03) asserts:

1. Violation of 47 U.S.C. SS 332(c)(7)(B)(iii): The Director's Decision Does Not Rest on Substantial Evidence.
2. Violation of 47 U.S.C. SS 332(c)(7)(i)(II): The Denials Result in a Prohibition of Service.
3. Violation of 47 U.S.C SS 253: The Denials Rest on Prohibitory Requirements that Are Preempted by Federal Law.
4. Violation of 47 U.S.C SS 253(c): The Director's Denials Impose a Discriminatory Barrier to Market Entry.
5. The Director's Denials Violate Crown Castle's Statewide Franchise Rights Under California Public Utilities Code Section 7901.

Background

In September 2017, the Architectural Review Board (ARB) discussed Crown Castle's Preliminary Architectural Review application (File 17PLN-00193) regarding conceptual siting criteria and proposed WCF designs.[1] On December 13, 2017, Crown Castle formally filed the 'Cluster 3' WCF applications (File 17PLN-00450). The ARB received a staff report on the Crown Castle Cluster 3 WCF applications for an initial hearing in December 2018.[2] However, the hearing was continued and was instead discussed at the January 17, 2019 ARB meeting date.[3]

The Crown Castle appeal, the Director's Decisions letter, the project plans, and public correspondence regarding Crown Castle Cluster 3 are viewable online on the following City webpage: https://www.cityofpaloalto.org/news/displaynews.asp?NewsID=4192.

Director's Decisions

[1] ID#8309 Preliminary Architectural Review (17PLN-00193) report September 21, 2017 (https://www.cityofpaloalto.org/civicax/filebank/documents/61856);
Meeting Minutes: (https://www.cityofpaloalto.org/civicax/filebank/documents/74815);
Video: http://midpenmedia.org/architectural-review-board-70/).

[2] ID#9531 ARB report December 6, 2018 (https://www.cityofpaloalto.org/civicax/filebank/documents/68006);
Meeting Minutes: (https://www.cityofpaloalto.org/civicax/filebank/documents/74816);
Video: (https://midpenmedia.org/architectural-review-board-74-1262018/).

[3] ID#9961 ARB report January 17, 2019 (https://www.cityofpaloalto.org/civicax/filebank/documents/68420);
Meeting Minutes (https://www.cityofpaloalto.org/civicax/filebank/blobdload.aspx?BlobID=74822);
Video: (https://midpenmedia.org/architectural-review-board-74-1172019/).

The Director's Decisions letter reflects staff review and consideration of the applicant's proposed WCF nodes for consistency and compliance with applicable municipal code requirements. The Decisions letter also conveys the ARB's recommendations based on the administrative record. The proposed Cluster 3 WCF node locations are shown in Figure 1.

Figure 1: Proposed Crown Castle Cluster 3 WCF Locations in the Downtown North Neighborhood

The Director's Decisions letter also provides relevant background information on Crown Castle Cluster 3, including the following key points:

- After the September 21, 2017 Preliminary ARB meeting, Crown Castle adjusted one WCF node location and changed the configuration to include a shroud design for the wood bayonet extension.
- The City received applications for the six WCF nodes in Crown Castle Cluster 3 on December 13, 2017.
- Prior to the January 17, 2019 ARB meeting, Crown Castle representatives indicated to staff that they wanted feedback from the ARB, the public, and the City's subconsultants. Crown sought this feedback prior to making any adjustments to their plans.
- In ARB staff reports dated December 6, 2018 and January 17, 2019, PDS staff and the Director identified items that remained outstanding for Crown Castle to address for the WCF nodes to meet the standards for WCF approval.
- PDS staff regularly contacted Crown Castle after the January 17, 2019 ARB meeting, without any substantive response from Crown Castle. Crown Castle had suggested project plans and other materials may be forthcoming with design modifications, refined antenna placement, perfecting the network.
- On September 17, 2019, staff received communication that Crown Castle was in a 'holding pattern' on how to proceed with the project.

- The Director issued the denial decisions on October 9, 2019, within a tolling agreement period in effect at that time and agreed upon by the City and Crown Castle. A tolling agreement is a mutual agreement between the agency (City of Palo Alto) and the applicant (Crown Castle, in this case) to extend the FCC imposed timeline (aka 'shot clock') end date or 'deadline' to issue decisions on the applications and related permits.

Applicable Standards

The Director's Decisions letter provides findings for denial under two alternative sections in the Palo Alto Municipal Code (PAMC), due to the changes in the Federal Communication Commission (FCC) regulations and guidance issued while Crown Castle Cluster 3 was under consideration:

- The six WCF nodes are described as Tier 3 WCFs under the PAMC Section 18.42.110 in effect at the time of formal application receipt (December 2017) and review by the ARB (January 2019), with approval subject to PAMC Section 18.42.110(h) Tier 3 WCF Permit Process and Findings (2017/2018).
- The six WCF nodes are described as Tier 2 WCFs under the current PAMC Section 18.42.110, with approval subject to PAMC Section 18.42.110(g) Tier 2 Wireless Communication Facilities Permit Process and Findings (2019). Council approved amendments to PAMC Section 18.42.110 in mid-2019 to comply with the changes in FCC regulations and guidance that came into effect in January 2019.[4]

Prior to mid-2019, Tier 3 WCF permit applications were subject to the WCF development standards in PAMC Section 18.42.110(i), the Architectural Review findings in PAMC Section 18.76.020, and the Conditional Use Permit findings in PAMC Section 18.76.010. After mid-2019, Tier 2 WCF permit applications were subject to the objective standards adopted and amended by Council resolution or the Generally Applicable Development Standards in PAMC Section 18.42.110(i).

City Council adopted an update to the objective standards on December 16, 2019, after the Director issued the Crown Castle Cluster 3 Decisions letter. The Director's Decisions letter denied the six WCF nodes in Cluster 3 without prejudice to any potential new application, which would be subject to the objective standards and PAMC Section 18.42.110 in effect at the time of application filing.

Appeal Process

Under both PAMC Section 18.42.110(h)(1), and 18.42.110(g), the Director's decision on Crown Castle's wireless application for Cluster 3 is appealable directly to the City Council, either for discussion at a hearing or on the consent calendar. The Crown Castle appeal is currently scheduled for the consent calendar on Council's January 27, 2020 agenda. If three Council

[4] Ordinance No. 5465 shows the Council amendments to PAMC Section 18.42.110 in underline/strikeout form. The fully codified Council amendments to PAMC Section 18.42.110 can be viewed online (http://library.amlegal.com/nxt/gateway.dll/California/paloalto_ca/title18zoning*/chapter1842standardsforspecialuses?f=templates$fn=default.htm$3.0$vid=amlegal:paloalto_ca$anc=JD_18.42.110).

Members vote to remove the appeal from the consent calendar, the appeal will be discussed on the action items portion of the agenda. Whether on the consent or action items portions of the agenda, the City Council will receive public testimony and act on the appeal on January 27, 2020.

The FCC Imposed Timeline and Tolling Agreements

WCF permit applications have a unique application process involving an FCC imposed timeline, whereby a decision on each WCF node must take place within a "reasonable" timeframe. The September 2018 FCC Small Cell Order defines reasonable timeframe for a small cell application as 60 days for all applicable permits (including any appeals), unless the timeframe is extended by mutual agreement.

Regarding Cluster 3, Crown Castle and the City had previously agreed to extend the tolling agreement period through November 18, 2019. The associated tolling agreement specified an intent to cooperate regarding any need for reasonable extension of the action in the event of an appeal. The tolling agreement was subsequently extended to January 31, 2020 at Crown Castle's request. If Council chooses to take an action other than upholding the Director's denial decisions, it would require the applicant's written consent to extend the current tolling agreement deadline beyond January 31, 2020.

The tolling agreement establishes the agreed deadline for the City's final action on the Cluster 3 project, which includes City actions on the entitlement applications, as well as streetwork and encroachment permits for the Cluster 3 WCF nodes. By January 31, 2020, staff will also act on the associated encroachment permits and streetwork permits consistent with the January 27, 2020 Council decisions for the six WCF nodes.

Overview of Federal Law Limitations of Local Land Use Decisions

Alongside the City of Palo Alto Comprehensive Plan and associated plans and policies, the local values that guide consideration of a WCF applications are set forth in the Palo Alto Municipal Code ("PAMC") Section 18.42.110, the architectural review findings in Section 18.76.020(d), the conditional use permit findings in Section 18.76.010(c), and Council's resolution adopting objective standards for WCF attachments on streetlight poles and wood utility poles in the public rights of way. In accordance with federal law, local governments are not to regulate the specific equipment to be used by an applicant. However, local governments may evaluate how the physical characteristics of the WCF designs and locations comply with local values concerning issues like aesthetics, noise, and safety.

No "Effective Prohibition" of Personal Wireless Service

The 1996 Federal Telecommunications Act recognizes the traditional zoning authority of local governments, while also precluding local governments from prohibiting, or having the effect of prohibiting the provision of wireless services. The FCC's September 2018 Small Cell Order interprets this law expansively to preclude cities from "materially inhibiting" the provision of wireless services, including inhibitions on "densifying a wireless network, introducing new

services, or otherwise improving service." In other words, while local governments may enforce local values, they have limited authority to deny an application where alternative means of providing wireless service are technically infeasible or otherwise unavailable. Multiple lawsuits across the nation, including a consolidated action before the Ninth Circuit Court of Appeals, seek to clarify the allowable scope of the FCC's broad interpretation of this restriction and its preemptive effect on local land use decisions.

No Unreasonable Discrimination Among Equivalent Providers

The Telecommunications Act precludes a local agency's wireless facility siting decisions from unreasonably discriminating among wireless service providers of functionally equivalent services. The Ninth Circuit has held that discrimination is unreasonable if a city treats one provider differently from another that is similarly situated with respect to the structure, placement, or impact of the proposed facilities. In other words, if the City wishes to impose different requirements on similarly situated applications, it must have a reasonable basis for why such differential treatment is necessary.

No Regulation Based on Radio Frequency (RF) Emissions

The FCC established comprehensive rules for human exposure to RF emissions (the "FCC Guidelines"). Under the Telecommunications Act of 1996, federal regulations preempt state and local governments from regulating RF emissions generated by wireless communications facilities. State and local governments cannot regulate wireless facilities based on environmental effects from RF emissions to the extent that the emissions comply with the FCC Guidelines. Although localities cannot establish their own standards for RF exposure, local officials may require wireless applicants to demonstrate compliance with the FCC Guidelines.

Public Hearing and Director's Decisions

The ARB and members of the public discussed Crown Castle Cluster 3 at one formal hearing on January 17, 2019. The ARB had received a report regarding the Cluster 3 application in its packet for December 6, 2018, but did not conduct the hearing until January, with another staff report issued January 17, 2019. Both reports identified many design concepts under the Palo Alto Comprehensive Plan and PAMC Section 18.42.110 and other codes that remained outstanding for Crown Castle to address in order to meet the findings in effect for 2017/2018.

In order to meet the findings in effect in 2017/2018, staff also identified opportunities to plant new or replacement amenity trees at four WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the node, contribute to a more cohesive site-specific design, and help maintain neighborhood character. Staff further identified that the side-mounted equipment proposed for Node 23 and Node 24 is near and/or face existing short transfer poles and that the transfer poles adjacent to Node 23 and Node 24 should be removed.

The staff reports also incorporate and discuss the City's subconsultant report, prepared by CTC and dated December 2018. Staff disseminated the CTC report to Crown Castle in hardcopy form on December 6, 2018, in electronic form on December 13, 2018, and as an attachment to the

January 17, 2019 staff report. The Architectural Review Board discussed the staff reports and the CTC report on January 17, 2019. CTC's analysis noted that it may be possible to reduce visual impacts by reducing the size of the components (antennas and related equipment), by camouflaging the equipment cabinets in some way, by placing equipment in underground vaults, and/or by considering a microcell architecture as a viable alternative.

After presentations from staff and Crown Castle, comments from members of the public, and discussion by ARB members, the ARB moved and recommended denial of the Crown Castle Cluster 3 as presented.

The Director's Decisions letter (Attachment C) provides detailed findings for project denial under both the 2017-2018 and 2019 standards for approval or denial. The Director found that each WCF node failed to meet one or more of the required standards, as outlined in detail in the letter. Under the PAMC, where findings of approval cannot be made, a project must be denied.

Discussion

<u>Applicant's Appeal</u>

1. Violation of 47 U.S.C. SS 332(c)(7)(B)(iii): The Director's Decision Does Not Rest on Substantial Evidence.
2. Violation of 47 U.S.C. SS 332(c)(7)(i)(II): The Denials Result in a Prohibition of Service.
3. Violation of 47 U.S.C SS 253: The Denials Rest on Prohibitory Requirements that Are Preempted by Federal Law.
4. Violation of 47 U.S.C SS 253(c): The Director's Denials Impose a Discriminatory Barrier to Market Entry.
5. The Director's Denials Violate Crown Castle's Statewide Franchise Rights Under California Public Utilities Code Section 7901.

Staff disputes each of these assertions.

Regarding substantial evidence and a node by node analysis, the Director's Decisions letter (Attachment C) is organized by the standards for approval or denial. The findings explain how the WCF node design submitted by Crown Castle for each WCF location or a subset of locations does or does not meet each of the standards. There is substantial evidence in the record that the proposed WCF nodes are not compatible with the Downtown North neighborhood; and for the specifically-described aesthetic and safety reasons outlined in the Director's Decisions letter. As a courtesy, staff has added a table to the draft Record of Land Use Action that summarizes which WCF nodes do not meet which applicable standard. The Director's Decisions letter specifically cites the substantial evidence upon which the decisions were made, under each of the standards utilized. The evidentiary findings are based on the project plans submitted by the applicant team, which were reviewed by City Departments and summarized in the December 6, 2019 and January 17, 2019 Architectural Review Board staff reports.

Substantial evidence is also contained within department review comments on the application materials, photographs of existing site conditions at each proposed location, the discussion by the ARB, and within the CTC report.

Regarding prohibition of service, prohibitory requirements, discriminatory barrier to market entry, and Statewide Franchise Rights, the City has approved other applications for 4G equipment that were able to demonstrate compliance with the City's standards. Recent examples include Vinculums/Verizon Cluster 1 (17PLN-00169) on May 21, 2018, Vinculums/Verizon Cluster 2 (17PLN-00170) on January 23, 2019, and five of the seven WCF nodes proposed in Crown Castle Cluster 2 (17PLN-00433) on February 4, 2019. The decisions to deny the WCF nodes in Crown Castle Cluster 3 are also consistent with state law regarding the City's authority to regulate aesthetic impacts in the right of way. Regarding PUC Section 7901, in April 2019 the California Supreme Court held:

> In sum, neither the plain language of section 7901 nor the manner in which it has been interpreted by courts and the PUC supports plaintiffs' argument that the Legislature intended to preempt local regulation based on aesthetic considerations.[5]

Furthermore, there are numerous additional wood utility poles and streetlights available to the applicant within the City's jurisdiction upon which to propose WCF node locations. There may be WCF designs that could meet the findings for approval. As of the publication of this report, the applicant has not provided any evidence showing that it would be infeasible to pursue a WCF node design that complies with the standards for WCF approval.

Contrast with City Actions on Previous Crown Castle Cluster Application (Cluster 2)

The City Council acted on the Crown Castle Cluster 2 WCF nodes (upholding the Director's decisions on 17PLN-00433) before the Council adopted the Objective Wireless Administrative Standards (objective standards) in April 2019. The Director had approved five of the seven Crown Castle Cluster 2 WCF nodes proposed for the University South neighborhood. These decisions were appealed to Council and Council subsequently upheld the specific Director's decisions.[6]

There are key distinctions between the Crown Castle Cluster 2 and Crown Castle Cluster 3 applications. As examples, the design for Cluster 2, as conditionally approved, utilizes a smaller volume and footprint than what was originally proposed at each location, the design can provide the horizontal and vertical clearance required for public safety, and all equipment and

[5] T-Mobile W. LLC v. City & Cty. of San Francisco, 6 Cal. 5th 1107, 1125, 438 P.3d 239, 249 (2019)

[6] Documents related to Crown Castle Cluster 2 include:

- ID #9429 (City Manager Report to City Council regarding the Crown Castle Cluster 2 appeals)(https://www.cityofpaloalto.org/civicax/filebank/blobdload.aspx?t=60065.04&BlobID=68682)
- City Council Record of Land Use Action 2019-02 (https://cityofpaloalto.org/civicax/filebank/blobdload.aspx?t=50359.16&BlobID=73130)
- ID #9350 (Staff Report to the Architectural Review Board (ARB) for December 6, 2018)(https://www.cityofpaloalto.org/civicax/filebank/documents/68005).

cabling would be concealed within the streetlight pole itself, in a top-mounted shroud, or in an underground vault. In contrast, these aforementioned aesthetic and public safety issues are still extant in the Cluster 3 application materials, as discussed in the Director's Decisions letter.

Policy Considerations

FCC's September 2018 Small Cell Order

In early 2019, the FCC adopted an Order that requires a 60-day turnaround for the City's decisions on these types of WCF applications. The update to the City's wireless code in April 2019 was partially in response to the FCC's order. One of the goals of the code update was to approve objective standards that create a "menu" of designs that can take advantage of a streamlined review process. This menu was intended to relieve the at-times overwhelming burden of small cell wireless applications on City resources, while retaining an appeal process before the City Council.

Cluster 3 Denial Allows Applicant to Resubmit Updated Plans, if Applicant Chooses.

Crown Castle Cluster 3 was submitted in December 2017, prior to adoption of the City's more recent objective standards, but the applicant has not provided any material and substansive responses in order to update or supplement the existing applications to comply with the 2017/2018 or the 2019 standards for approval or denial. Indeed, the applicant has taken no substantial action on the applications in nearly a year, since the ARB held the project hearing in January 2019. The Director's Decisions letter clearly states that the denial decisions are without prejudice to future applications if Crown Castle can provide plans and other application materials that demonstrate WCF nodes that meet the standards for approval.

Resource Impact

Per the Municipal Fee Schedule, all WCF Permit applications are processed as Cost Recovery applications; the City charges the applicant for the staff time necessary for processing tasks, such as application review and analysis, preparation of staff reports, and presentations to Council. The Municipal Fee Schedule established that when a timely appeal is filed by a party, applicants then submit a deposit for the processing of that appeal. Processing costs are retained when an appeal is upheld, but not charged if an appeal is denied.

Timeline

The existing tolling agreement deadline requires that Council review and take action to approve or deny the Crown Castle Cluster 3 WCF nodes on or before January 31, 2020. By January 31, 2020, staff will also act on the associated encroachment permits and streetwork permits consistent with the January 27, 2020 Council decisions on the six WCF nodes. For Council actions other than denial, another tolling agreement extension would be required, though the applicant cannot be compelled to sign a tolling agreement extension.

Alternative Action

The Council may return at a future date, with Applicant's consent to a further tolling

agreement, to consider conditional approval of the six WCF nodes in Crown Castle Cluster 3 in whole or in part, and to direct staff to prepare findings for approval and conditions of approval.

Environmental Review

The decisions to deny six WCF nodes are exempt from the California Environmental Quality Act (CEQA) per Public Resources Code Section 21080(b)(5).

Attachments:

- Attachment A: Draft City Council Record of Land Use Action (RLUA)
- Attachment B: WCF Node Location Map
- Attachment C: Director's Decisions Letter (dated October 9, 2019)
- Attachment D: AP-2019-03 Crown Castle Appeal of 17PLN-00450
- Attachment E: Applicant Project Description (from ARB Staff Report)

NOT YET APPROVED

ACTION NO. _____:

RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE ACTION
CROWN CASTLE CLUSTER 3 WIRELESS COMMUNICATION FACILITY
[FILE 17PLN-00450]

On January 27, 2020, the Council held a duly noticed public hearing, and, after considering all of the evidence presented, denied the appeal (19-AP-03) and upheld the Director of Planning and Development Services' October 9, 2019 decisions to deny the six Wireless Communication Facility (WCF) nodes in the WCF Permit Applications (File 17PLN-00450), making the following findings, determination and declarations:

SECTION 1. Background. The City Council of the City of Palo Alto ("City Council") finds, determines, and declares as follows:

A. On December 13, 2017, Sure Site, on behalf of Crown Castle, filed Tier 3 WCF Permit Applications under the application file number 17PLN-00450. The proposed WCF nodes were grouped together into a cluster for processing to allow coordinated City review and transparency to members of the public about what is proposed in their neighborhoods. This group of applications was referred to as "Crown Castle Cluster 3." Cluster 3 was comprised of six (6) WCF small cell nodes in the public right of way to be leased by Verizon in the Downtown North neighborhood. All six WCF nodes were proposed on existing wood utility poles and were of a project type anticipated by the Master License Agreement. The proposed equipment would include one antenna at the top of each pole, and shrouded equipment mounted to the poles. The applications were for the following proposed WCF nodes:

- **Node 20**, CPAU Pole #6474 (adjacent to 205 Everett Avenue and also near 251 Emerson Street)
- **Node 21m1**, CPAU Pole #6362 (adjacent to 301 Bryant Street and also near 311 Everett Avenue)
- **Node 22m2**, CPAU Pole #6288 (adjacent to 258 Waverley Street)
- **Node 23**, CPAU Pole #6350 (adjacent to 482 Everett Avenue)
- **Node 24**, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue)
- **Node 32**, CPAU Pole #6492 (adjacent to 201 High Street).

B. Director of Planning and Development Services (Director) denied the WCF application following review by the Architectural Review Board on January 17, 2019. Notices of the Director's decisions were mailed to residents and owners regarding the October 9, 2019 decisions. The denial decisions are without prejudice and do not preclude the applicant from filing new WCF permit application(s). The action is contained in the CMR #10761.

C. Within the prescribed timeframe, on October 23, 2019, Crown Castle submitted an appeal (19-AP-03) of the decisions within the Director's Decisions letter.

D. Crown Castle submitted a project design applicable to six distinct WCF nodes; therefore, the findings below are applicable to the design as proposed at each node: Node 20, Node 21m1, Node 22m2, Node 23, Node 24, and Node 32 in relation to site specific characteristics. The substantial evidence upon which the decisions were made is described within the Director's Decisions letter under each of the standards utilized; the substantial evidence is primarily within the project plans submitted by the applicant team,

which were reviewed by City Departments and summarized in the December 6, 2019 and January 17, 2019 Architectural Review Board staff reports. Substantial evidence is also contained within department review comments on the application materials, photographs of existing site conditions at each proposed location, the discussion by the ARB, and within the CTC report. **Table 1** below provides a node by node overview showing which of the City's standards for approval were not met.

E. The six WCF nodes in Crown Castle Cluster 3 were described as Tier 3 Wireless Communication Facilities under the Palo Alto Municipal Code in effect at the time of formal application receipt, with approval subject to PAMC section 18.42.110(h) (2017/2018). The City subsequently updated its wireless ordinance in 2019 to comply with the FCC guidance and regulations effective January 2019. Under the revised City ordinance in effect when the Director's Decision was issued, these six WCF nodes are classified as Tier 2 WCF, subject to approval in 18.42.110(g) (2019). To promote clarity, findings for denial below are presented separately under both standards.

NOT YET APPROVED

Table 1: Crown Castle Cluster 3 (17PLN-00450) Node by Node Summary Relative to the Standards for WCF Permit Approval						
Standards 2017/2018						
Development Standards						
	Node 20	Node 21m1	Node 22m2	Node 23	Node 24	Node 32
Development Standard 1	Fail	Fail	Fail	Fail	Fail	Fail
Development Standard 2	Fail	Fail	Fail	Fail	Fail	Fail
Development Standard 3	Fail	Fail	Fail	Fail	Fail	Fail
Development Standard 4	Fail	Fail	Fail	Fail	Fail	Fail
Development Standard 6	Fail	Fail	Fail	Fail	Fail	Fail
Architectural Review Findings						
	Node 20	Node 21m1	Node 22m2	Node 23	Node 24	Node 32
Architectural Review Finding 1	Fail	Fail	Fail	Fail	Fail	Fail
Architectural Review Finding 2	Fail	Fail	Fail	Fail	Fail	Fail
Architectural Review Finding 3	Fail	Fail	Fail	Fail	Fail	Fail
Architectural Review Finding 4	Fail	Fail	Fail	Fail	Fail	Fail
Architectural Review Finding 5	Fail	Fail	Fail	Fail		
Conditional Use Permit Findings						
	Node 20	Node 21m1	Node 22m2	Node 23	Node 24	Node 32
Conditional Use Permit Finding 1	Fail	Fail	Fail	Fail	Fail	Fail
Conditional Use Permit Finding 2	Fail	Fail	Fail	Fail	Fail	Fail
Standards 2019						
Objective Wireless Administrative Standards (“Objective Standards” or “Wireless Administrative Standards”) (2019)						
	Node 20	Node 21m1	Node 22m2	Node 23	Node 24	Node 32
Match Any of the Four Standard Designs Approved by the City	Fail	Fail	Fail	Fail	Fail	Fail
Integrated Shroud and “Antenna Skirt” without Gaps	Fail	Fail	Fail	Fail	Fail	Fail
Conduit Mounted Flush to Pole	Fail	Fail	Fail	Fail	Fail	Fail
Shrouds and Equipment Designed without Gaps between Materials or Sky Visible between Component Surfaces	Fail	Fail	Fail	Fail	Fail	Fail
Total Height		Fail	Fail	Fail		
Absence of Amenity Trees	Fail	Fail	Fail	Fail		

Less than the Required 1.5 feet of Horizontal Clearance between the Existing Pole and the Adjacent Curbline	Fail	Fail		Fail	Fail	Fail
Generally Applicable Development Standards (2019)						
	Node 20	Node 21m1	Node 22m2	Node 23	Node 24	Node 32
Development Standard 1	Fail	Fail	Fail	Fail	Fail	Fail
Development Standard 2	Fail	Fail	Fail	Fail	Fail	Fail
Development Standard 3	Fail	Fail	Fail	Fail	Fail	Fail
Development Standard 5	Fail	Fail	Fail	Fail	Fail	Fail

E. On January 27, 2020 the City Council held a duly noticed public hearing on the appeal, at which evidence was presented and all persons were afforded an opportunity to be heard in accordance with the Palo Alto Municipal Code and the Council's Policies and Procedures.

SECTION 2. Environmental Review. The denial decisions are exempt from the provisions of the California Environmental Quality Act per Section 21080(b)(5) of the Public Resources Code.

SECTION 3. Denial Findings.

A. 2017/2018 Palo Alto Municipal Code (PAMC) Section 18.42.110(h)(2)-(3) [Tier 3]

According to PAMC Section 18.42.110(h)(2), the Director or Council on appeal shall grant a Tier 3 Wireless Communication Facility (WCF) permit provided the proposed WCF complies with the development standards in PAMC Section 18.42.110(i), the conditions of approval in Section 18.42.110(j), and that all of the architectural review findings in Section 18.76.020(d) and the conditional use permit findings in PAMC Section 18.76.010(c) can be made. Conversely, PAMC Section 18.42.110(h)(3) provides that the Director, or Council on appeal, shall deny a Tier 3 WCF Permit if the findings above cannot be made. These requirements are intended to ensure that wireless communications facilities blend with their existing surroundings and do not negatively impact the environment, historic properties, or public safety.

Finding A-1 - WCF compliance with Development Standards, PAMC 18.42.110(i)

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the Development Standards in **PAMC Section 18.42.110(i)(1) through (11)** is outlined below:

1. All six nodes fail to meet Development Standard 1, that each WCF *"shall utilize the smallest footprint possible."* The design of the WCF nodes in Crown Castle Cluster 3 does not utilize the smallest footprint possible. Specifically:
    - The proposed designs increase the footprint of the existing wood utility pole itself in a highly noticeable and visually intrusive manner because the conduit(s) running along the pole utilize multiple standoff brackets that increase the overall diameter of the WCF and create visible gaps between the conduit and the existing pole (see Project Plans, Sheets D-5, P-3, and P-4), rather than mounting the conduit(s) flush to the pole.
    - The radio equipment in the proposed design extends horizontally beyond the minimum necessary and employs a configuration that is not the smallest footprint. Project Plans Sheet D-4 calls for a separation of the RRU-32s to be six inches from the pole and is inconsistent

with Sheets P-3 and P-4 that note a separation of three-inches. Utilizing the six-inch separation on Sheet D-4, the unshrouded RRU-32s extend over two-feet horizontally from the pole. Regardless of the aforementioned inconsistencies in the project plans, if the RRU-32s were mounted parallel instead of perpendicular to the pole, then the WCF could be more horizontally compact, would be arranged to form a slim profile by using vertical alignment of the equipment rather than the current proposal which shows the equipment 'sandwiching' the bracket, and would have a smaller footprint.

- In the absence of a detailed analysis that investigated the feasibility of placing WCF node equipment in underground vaults at the proposed locations or elsewhere, the City cannot conclude that the footprint of the proposed side-mounted equipment is the smallest possible, or if it could be smaller through placement of the radio and other equipment in underground vaults.

2. All six nodes fail to meet Development Standard 2, that each WCF *"shall be designed to minimize the overall height, mass, and size of the cabinet and enclosure structure."* The design of the WCF nodes in Crown Castle Cluster 3 does not minimize the overall height, mass, and size of the cabinet and enclosure structure. Specifically:
   - The application materials did not contain information on how overall height of the proposed design could be minimized by utilizing smaller antennas, which is discussed in the CTC report.
   - The diameter of the wooden bayonet shroud shown on Project Plans Sheet D-6 for all nodes is generally proposed to be the diameter of the antenna, which is wider and creates more mass and size/volume than the tapered minimum necessary to shroud and conceal the wooden bayonet extension and conduit.
   - As stated in Finding A-1 paragraph 1 above, the proposed design utilizes standoff brackets to create separation between the conduits and the pole and consequently does not minimize the overall mass and size/volume of an enclosure structure.
   - As stated in Finding A-1 paragraph 1 above, the proposed design horizontally extends for more than what is necessary from the pole. Using the placement of the standoff brackets as an approximate from which to estimate the mass and size of a cabinet or enclosure structure, the overall mass and volume of a related enclosure would extend further from the pole than what would be necessary if the RRU-32s were mounted parallel to the pole. Furthermore, the top of the cabinet or enclosure structure would need to be higher than the top of the proposed RRU-32s mounting brackets in order to shroud and conceal the currently exposed cables/wires extending from the equipment into the conduit. This design would not minimize overall height, mass, and size of an enclosure structure.

3. All six nodes fail to meet Development Standard 3, that each WCF "*shall be screened from public view."* The design of the WCF nodes in Crown Castle Cluster 3 is not screened from public view. Specifically:
   - Although a shroud for the wooden bayonet extension is proposed, Project Plans Sheet D-6 used for all nodes clarifies that the shroud does not fully extend over the conduit and risers, nor does it extend downwards to the top of the existing pole; given the gaps noted on Sheet D-6, the proposed design does not screen all of the WCF node components proposed near the top of the existing pole.
   - The proposed design does not screen the radio and other equipment, cabling, and mounting brackets, either by use of metal shrouds that are painted to match the existing wood utility poles or through other means; the side mounted radio and other equipment, cabling, and

mounting brackets are entirely unscreened on each pole.

- The proposed design has conduit(s) running along the pole that utilize multiple standoff brackets to increase the overall diameter of the WCF and to create visible gaps between the conduit and the existing pole (see Project Plans Sheets D-5, P-3, and P-4 for all nodes), rather than mounting the conduit(s) flush to the pole. The mounting brackets for the conduit near the top of the pole are not shown in the visual simulations, but they are noted on the elevations in the project plans.
- Furthermore, amenity trees are not proposed at four (4) WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the node and ensure appropriate screening. Additionally, the selected pole for Node 32 is highly visible and there isn't a readily available opportunity to plant an amenity tree to help interrupt direct views of the proposed WCF.
- Additionally, the proposed orientation of the equipment at some nodes increases their visibility within the public right of way:
    i. Instead of proposing an installation that is parallel to the travel way, Node 21m1 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a comparatively wider and more highly visible deployment when viewed from the right of way.
    ii. Instead of proposing an installation that faces away from an intersection, Node 23 is proposed to face toward an intersection without any screening.
    iii. Instead of proposing an installation that is parallel to the travel way, Node 32 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a comparatively wider and more highly visible deployment when viewed from the right of way.

4. All six nodes fail to meet Development Standard 4, that each WCF *"shall be architecturally compatible with the existing site."* The design of the WCF nodes in Crown Castle Cluster 3 is not architecturally compatible with the existing site; on January 17, 2019, the Architectural Review Board considered the architectural compatibility and aesthetics of the pole-mounted equipment as a significant basis for their recommendation to deny the six (6) WCF nodes in Crown Castle Cluster 3, specifically citing that the proposed design was not unified and coherent in a manner that enhances living conditions on the site and in adjacent residential areas.

5. All six nodes fail to meet Development Standard 6, that *"an antenna, base station, or tower shall be designed to minimize its visibility from off-site locations and shall be of a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the antenna, base station, or tower into the surrounding area."* The design of the WCF nodes in Crown Castle Cluster 3 does not minimize its visibility from off-site locations and does not use a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the antenna, base station, or tower into the surrounding area. For instance:
    - Although a shroud for the wooden bayonet extension is proposed, Project Plans Sheet D-6 for all nodes clarifies that the shroud does not fully extend over the conduit and risers, nor does it extend downwards to the top of the existing pole; given the gaps noted on Sheet D-6, the proposed design does not screen all of the WCF node components proposed near the top of the existing pole.
    - The proposed design does not screen the radio and other equipment, cabling, and mounting brackets, either by use of metal shrouds that are painted to match the existing wood utility poles or through other means; the side mounted radio and other equipment, cabling, and

mounting brackets are entirely unscreened on each pole.

- The proposed design has conduit(s) running along the pole that utilize multiple standoff brackets to increase the overall diameter of the WCF and to create visible gaps between the conduit and the existing pole (see Project Plans Sheets D-5, P-3, and P-4 for all nodes), rather than mounting the conduit(s) flush to the pole. Note that the mounting brackets for the conduit near the top of the pole are not shown in the visual simulations, but they are noted on the elevations in the project plans.
- Furthermore, amenity trees are not proposed at four (4) WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the node and ensure appropriate screening. Additionally, the selected pole for Node 32 is highly visible and there isn't a readily available opportunity to plant an amenity tree to help interrupt direct views of the proposed WCF.
- Additionally, the proposed orientation of the equipment at some nodes increases their visibility within the public right of way:
    i. Instead of proposing an installation that is parallel to the travel way, Node 21m1 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a comparatively wider and more highly visible deployment when viewed from the right of way.
    ii. Instead of proposing an installation that faces away from an intersection, Node 23 is proposed to face toward an intersection without any screening.
    iii. Instead of proposing an installation that is parallel to the travel way, Node 32 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a comparatively wider and more highly visible deployment when viewed from the right of way.

Finding A-2 – WCF compliance with Architectural Review Findings, PAMC Section 18.76.020(d)

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the architectural review findings in **PAMC Section 18.76.020(d)** is outlined below.

1. All six nodes fail to meet architectural review finding 1, that *"The design is consistent with applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides."* As outlined in Finding A-1 above, the design of the WCF nodes in Crown Castle Cluster 3 does not comply with one or more of the development standards in PAMC 18.42.110(i). As outlined in Finding A-3 below, there several goals and policies in the City's Comprehensive Plan that are not met by the design of the WCF nodes in Crown Castle Cluster 3. Therefore, the design of the WCF nodes in Crown Castle Cluster 3 does not comply with all applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides.

2. All six nodes fail to meet the following elements of architectural review finding 2, that *"The project has a unified and coherent design, that:"*

   A. Creates an internal sense of order and desirable environment for occupants, visitors, and the general community. The design of the WCF nodes in Crown Castle Cluster 3 does not shroud, conceal, or camouflage the proposed radio and other equipment, cabling, and mounting brackets. The design hangs in a discordant manner to the pole leaving gaps between the components and visual exposure of the many different pieces and sizes of equipment. The design does not use the smallest footprint

possible as required by code. Consequently, the design negatively affects the desirability of the environment for occupants, visitors, and the general community.

D. Provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations. The design of the WCF nodes in Crown Castle Cluster 3 does not meet this finding, as the WCF nodes are not designed to blend in with the existing character of or adjacent land uses, have more mass than necessary, and are visually intrusive due to the lack of screening, concealment, and camouflage.

E. Enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas. On January 17, 2019, the Architectural Review Board considered the architectural compatibility and aesthetics of the pole-mounted equipment as a significant basis for their recommendation to deny the six (6) WCF nodes in Crown Castle Cluster 3, specifically citing that the proposed design was not unified and coherent in a manner that enhances living conditions on the site and in adjacent residential areas. The design of the WCF nodes in Crown Castle Cluster 3 does not shroud, conceal, or camouflage the proposed radio and other equipment, cabling, and mounting brackets, and the conduit is not mounted flush to the pole. Instead, the design appears to hang in a discordant manner to the pole leaving gaps between the components and visually exposing the many different pieces and sizes of equipment. The proposed project does not include residential uses itself. However, the design of the WCF nodes in Crown Castle Cluster 3 does not enhance the living conditions in adjacent residential areas, as the design does not comply with one or more of the City's development standards (as outlined in Finding A-1 above) and several Comprehensive Plan goals and policies (as outlined in Finding A-3 below).

3. All six nodes fail to meet architectural review finding 3, that "*The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding."* The design of the WCF nodes in Crown Castle Cluster 3 does not meet this finding, as the design does not shroud, conceal, or camouflage the proposed radio and other equipment, cabling, and mounting brackets and the conduit is not mounted flush to the pole. Instead, the design appears to hang in a discordant manner to the pole leaving gaps between the components and visual exposure of the many different pieces and sizes of equipment.

4. All six nodes fail to meet the architectural review finding 4, that "*The design is functional, allowing for ease and safety of pedestrian and bicycle traffic and providing for elements that support the building's necessary operations (e.g. convenient vehicle access to property and utilities, appropriate arrangement and amount of open space and integrated signage, if applicable, etc.*)." The design of the WCF nodes in Crown Castle Cluster 3 fails to demonstrate that each node would have adequate horizontal clearance while not facing private property or extending over adjacent sidewalks, affecting the ease and safety of pedestrian and bicycle traffic. Furthermore, the proposed design is not shown to provide adequate vertical clearance over sidewalks, which is a required 10 feet in the City's standard conditions of approval, and affects the ease and safety of pedestrian and bicycle traffic.

5. Four of the six nodes fail to meet architectural review finding 5, that "*The landscape design complements and enhances the building design and its surroundings, is appropriate to the site's functions, and utilizes to the extent practical, regional indigenous drought resistant plant material capable of providing desirable habitat that can be appropriately maintained."* Node 20, Node 21m1,

Node 22m2, and Node 23 do not meet this finding, as those WCF nodes do not include the use of amenity trees to provide screening where it would be possible.

Finding A-3 – WCF compliance with Conditional Use Permit Findings, PAMC Section 18.76.010(c)

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the conditional use permit findings in **PAMC Section 18.76.010(c)** is outlined below:

1. All six nodes fail to meet conditional use permit finding 1, that "*The project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.*" The Crown Castle Cluster 3 application materials do not clearly demonstrate that development standards-compliant WCF node designs would be mounted and installed in a manner that complies with the following safety regulations, specifically:
    - adherence to Federal Communications Commission standards, including those in FCC Bulletin OET 65,
    - adherence to California Public Utilities Commission (CPUC) General Order (GO) 95 requirements, with regard to equipment mounting orientation not precluding access to the required climbing space on the pole, providing vertical separation of antennas from electric lines, ensuring the post-installation structural integrity of the pole, and providing compliant attachment and mounting details and materials,
    - providing at least minimum horizontal and/or vertical clearance from intersections, curblines, and the travel way for pedestrians, bicycles, and vehicles (which is important for the operation of bicycle lanes, red curb zones, on-street parking spaces for standard height vehicles as well as oversized delivery vehicles, etc.).
    - providing at least minimum sight line clearance at intersection street corners, including at least a minimum of three foot horizontal clearance from corners to ensure visibility and safety.
    - prevention of obstructions to pedestrian and bicycle flow in general and especially on narrow sidewalks any busy sidewalks.

    Furthermore, there is less than the required 1.5 feet of horizontal clearance between the existing pole and the adjacent curbline at the following five (5) node locations, resulting in the inability to provide the horizontal clearance while also not facing private property or extending over existing sidewalks:
        - Node 20, CPAU Pole #6474 (adjacent to 205 Everett Avenue and also near 251 Emerson Street)
        - Node 21m1, CPAU Pole #6362 (adjacent to 301 Bryant Street and also near 311 Everett Avenue)
        - Node 23, CPAU Pole #6350 (adjacent to 482 Everett Avenue)
        - Node 24, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue)
        - Node 32, CPAU Pole #6492 (adjacent to 201 High Street).

2. All six nodes fail to meet conditional use permit finding 2, that "*The project is located and conducted in a manner in accord with the Palo Alto Comprehensive Plan and the purposes of this title (Zoning).*" The City's Municipal Code provides a process to permit WCF's that blend with their existing surroundings and do not negatively impact the environment, historic properties, or public safety. As outlined in Finding A-1 above, the design of the WCF nodes in Crown Castle Cluster 3 does not comply with one or more of the development standards in PAMC 18.42.110(i). As outlined here, there several

goals and policies in the City's Comprehensive Plan that are not met by the design of the WCF nodes in Crown Castle Cluster 3:

- The design of the WCF nodes in Crown Castle Cluster 3 prevents the finding of consistency with Comprehensive Plan GOAL L-4/POLICY L-4.7/POLICY L-4.8, which emphasize maintaining and enhancing the downtown area by promoting quality design that recognizes the regional and historic importance of the area, reinforces its pedestrian character, and that creates an environment that is inviting to pedestrians and bicyclists. The proposed design fails to minimize its footprint, is not screened from public view, has more mass than necessary, and has other aesthetic challenges as outlined in Finding A-1 above, and does not provide adequate horizontal and vertical clearances for pedestrians, bicyclists, and vehicles as outlined above in Finding A-3 paragraph 1.
- The design of the WCF nodes in Crown Castle Cluster 3 prevents the finding of consistency with Comprehensive Plan GOAL L-9/POLICY L-9.3/POLICY L-9.4/POLICY L-9.5/POLICY L-9.10/PROGRAM L9.10.2, which emphasize creating attractive, inviting public spaces and streets that enhance the image and character of the City, treating residential streets a public ways and neighborhood amenities, promoting walking and "active transportation," and preserving and enhancing publicly accessible, shared outdoor gathering spaces within walking and biking distance of residential neighborhoods, designing utility structures to meet high-quality design standards and embrace technological advances, and encourage the use of compact and well-designed utility elements such as telecommunications infrastructure and place these elements in locations that will minimize their visual intrusion. As discussed by the Architectural Review Board and as outlined in Finding A-1 above, the design is visually intrusive and is not compact, does not utilize the smallest footprint possible or minimize mass, and is not unified and coherent in a manner that enhances living conditions on the site and in adjacent residential areas.
- The design of the WCF nodes in Crown Castle Cluster 3 prevents the finding of consistency with Comprehensive Plan GOAL T-6 that emphasizes providing a safe environment for motorists, pedestrians, and bicyclists because the design does not provide adequate horizontal and vertical clearances for pedestrians, bicyclists, and vehicles as outlined above in Finding A-3 paragraph 1.

In staff reports dated December 6, 2018 (ID # 9351, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/68006) and January 17, 2019 (ID # 9961, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/68420), the Director identified many design concepts under the Palo Alto Comprehensive Plan and PAMC Section 18.42.110 and other codes that remained outstanding for Crown Castle to address with a response in order to meet the findings in effect for 2017/2018, including:

- Discussion of vaulting of equipment,
- Ensuring that no sky shall be seen through the mounting and attachment equipment for the antennas and the conduits,
- Reducing the standoff distance for pole mounted equipment,
- Utilization of shrouding for pole mounted equipment,
- Reducing the volume of pole mounted equipment,
- Maintaining required climbing space while also not having pole mounted equipment face directly toward adjacent private property or extend over sidewalks,

- Maintaining minimum horizontal and vertical clearances:
    - At least 1.5-feet horizontal clearance between any new or relocated equipment and the adjacent face of curb or edge of traveled way for any public roadway, driveway, or alley, unless 16-feet vertical clearance is provided between equipment and the top of adjacent travel way,
    - At least 3-feet of horizontal clearance from driveways or corners, and
    - At least 10-feet vertical clearance between the adjacent sidewalk, path, or walkway grade.
- Clarifying cohesiveness and integration of the design in regard to:
    - the shape, design, color, and materiality of the antenna shroud, as well as how far it extends from the base of the antenna to the top of the existing pole,
    - the cables in the conduit into the bottom of the antenna shroud, and
    - any separation of the conduit from the top and mid-section of the pole, given that the pole has some tapering.
- Any pole-mounted equipment must:
    - not face the street or adjacent properties,
    - not extend over the sidewalk,
    - be positioned to ensure the equipment meets minimum horizontal and vertical clearances relative to driveways, corners, and curblines,
    - be screened by a painted metal shroud,
    - be arranged to form a slim profile - using vertical alignment of the equipment rather than the current proposal which shows the equipment 'sandwiching' the bracket.

In order to meet the findings in effect in 2017/2018, staff also identified opportunities to plant new or replacement amenity trees at four WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the node, contribute to a more cohesive site specific design, and help maintain neighborhood character. Staff further identified that the side-mounted equipment proposed for Node 23 and Node 24 is near and/or face existing short transfer poles and that the transfer poles adjacent to Node 23 and Node 24 should be removed.

The staff reports also incorporate and discuss the City's subconsultant report, prepared by CTC and dated December 2018. Staff disseminated the CTC report to Crown Castle in hardcopy form on December 6, 2018, electronic form on December 13, 2018, and as an attachment to the January 17, 2019 staff report. The Architectural Review Board discussed the staff reports and the CTC report on January 17, 2019. CTC's analysis noted that it may be possible to reduce visual impacts by reducing the size of the components (antennas and related equipment), by camouflaging the equipment cabinets in some way, by placing equipment in underground vaults, and/or by considering a microcell architecture as a viable alternative.

Based on the foregoing and information contained in the administrative record, each of the WCF nodes cannot be found as consistent with the City's Comprehensive Plan and the purposes of zoning.

B. 2019 Palo Alto Municipal Code (PAMC) Section 18.42.110(g)(2)-(3) [Tier 2]

According to PAMC Section 18.42.110(g)(2), the Director or Council on appeal shall grant a Tier 2 Wireless Communication Facility (WCF) permit provided the proposed WCF complies with the with the conditions of approval in Section 18.42.110(j) and all objective standards adopted and amended from time to time by resolution of the City Council or the development standards in

Section 18.42.110(i). If such objective standards are repealed, an application shall not be granted unless, in addition to the other requirements of this section, all of the architectural review findings in Section 18.76.020(d) can be made. Conversely, PAMC Section 18.42.110(g)(3) provides that the Director, or Council on appeal, shall deny a Tier 2 WCF Permit if the findings above cannot be made. These requirements are intended to ensure that wireless communications facilities blend with their existing surroundings and do not negatively impact the environment, historic properties, or public safety.

Finding B-1 - WCF compliance with Objective Aesthetic, Noise, and Related Standards for Wireless Communication Facilities in the Public Rights of Way ("Objective Standards" or "Wireless Administrative Standards")

1. The proposed design for the six (6) WCF nodes proposed in Crown Castle Cluster 3 (17PLN-00450) does not comply with one or more of the City's Wireless Administrative Standards in effect in October 2019. Specifically, the proposed design:
    - does not match any of the four standard designs approved by the City: a) Underground design, b) Top-mounted design, c) Minimal sunshield design, or d) Existing signage.
    - does not include a single integrated shroud and "antenna skirt" that meets the pole without any gaps.
    - does not show conduit as mounted flush to the pole.
    - does not show all shrouds and equipment designed without gaps between materials or sky visible between component surfaces.

    Furthermore, the Project Plans show:
    - A total height that exceeds 55 feet for three (3) WCF nodes (Node 21m1, Node 22m2, and Node 23).
    - The absence of amenity trees at four (4) WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the WCF equipment. Additionally, the selected pole for Node 32 is highly visible and there isn't a readily available opportunity to plant an amenity tree to help interrupt direct views of the proposed WCF.
    - That there is less than the required 1.5 feet of horizontal clearance between the existing pole and the adjacent curbline at the following five (5) node locations, resulting in the inability to provide the horizontal clearance while also not facing private property or extending over existing sidewalks:
        - Node 20, CPAU Pole #6474 (adjacent to 205 Everett Avenue and also near 251 Emerson Street)
        - Node 21m1, CPAU Pole #6362 (adjacent to 301 Bryant Street and also near 311 Everett Avenue)
        - Node 23, CPAU Pole #6350 (adjacent to 482 Everett Avenue)
        - Node 24, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue)
        - Node 32, CPAU Pole #6492 (adjacent to 201 High Street).

Based on the foregoing and information contained in the administrative record, each of the WCF nodes cannot be found as consistent with the City's Wireless Administrative Standards in effect in October 2019.

Finding B-2 - WCF compliance with Generally Applicable Development Standards, PAMC 18.42.110(i)

NOT YET APPROVED

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the Generally Development Standards in **PAMC 18.42.110(i)** is outlined below:

1. All six nodes fail to meet Development Standard 1, that each WCF "*shall utilize the smallest antennae, radio, and associated equipment, as measured by volume, technically feasible to achieve a network objective,*" as outlined above in Finding A-1 under paragraphs 1 and 2.

2. All six nodes fail to meet Development Standard 2, that each WCF "*shall be screened from public view,"* as outlined above in Finding A-1 under paragraph 3.

3. All six nodes fail to meet Development Standard 3, that each WCF "*when attached to an existing structure, shall be shrouded or screened using materials or colors found on existing structure."* The design of the WCF nodes in Crown Castle Cluster 3 proposes to paint some or all of the mounted equipment Sherwin Williams Well-Bread brown, which is a paint color that is similar to the color of a new or fairly new wood utility pole. However, it is not clear from the application materials if the exposed cables/wires would also be painted this color, and, regardless, the design is not shrouded.

4. All six nodes fail to meet Development Standard 5, that for each WCF, "*an antenna, base station, or tower shall be of a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the antenna, base station, or tower into the surrounding area, such as the use of a monopine design,"* as outlined above in Finding A-1 under paragraph 5.

For the reasons set forth above, the City Council denies Node 20, CPAU Pole #6474 (adjacent to 205 Everett Avenue and also near 251 Emerson Street).

For the reasons set forth above, the City Council denies Node 21m1, CPAU Pole #6362 (adjacent to 301 Bryant Street and also near 311 Everett Avenue).

For the reasons set forth above, the City Council denies Node 22m2, CPAU Pole #6288 (adjacent to 258 Waverley Street).

For the reasons set forth above, the City Council denies Node 23, CPAU Pole #6350 (adjacent to 482 Everett Avenue).

For the reasons set forth above, the City Council denies Node 24, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue).

For the reasons set forth above, the City Council denies Node 32, CPAU Pole #6492 (adjacent to 201 High Street).

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

NOT YET APPROVED

ABSTENTIONS:

ATTEST:

_____
City Clerk

_____
Mayor

APPROVED AS TO FORM:

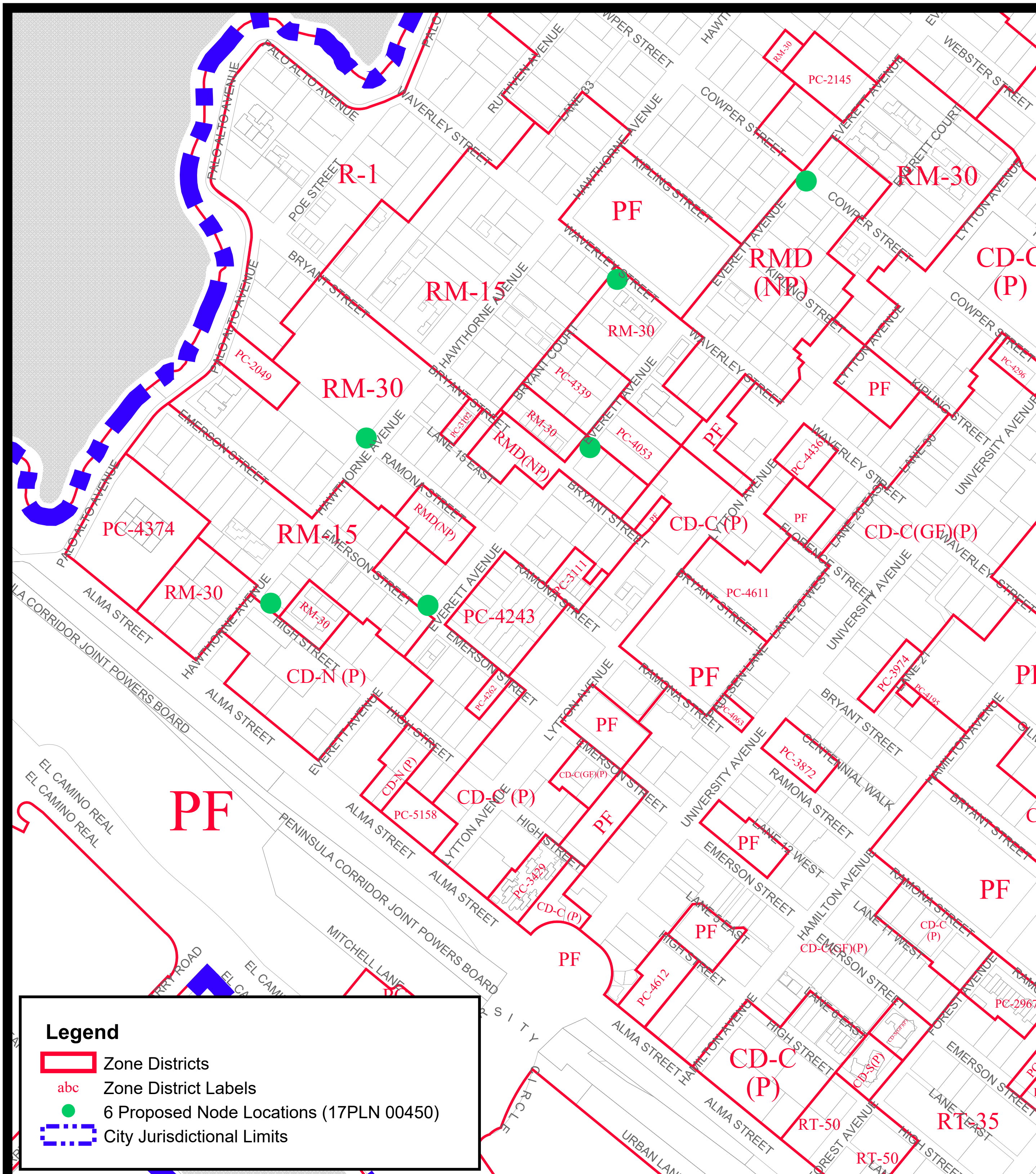
APPROVED:

_____
Deputy City Attorney

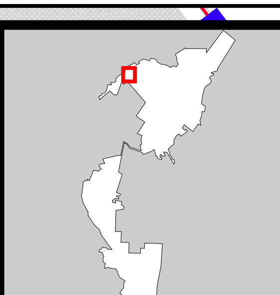
_____
City Manager

_____
Director of Planning and Development Services

_____
Director of Administrative Services



The City of Palo Alto



17PLN-00450
Location Map and Zoning Districts
Area Map
v20181121

This map is a product of the City of Palo Alto GIS

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PLANNING & COMMUNITY ENVIRONMENT

CITY OF PALO ALTO
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
650.329.2441

October 9, 2019

Crown Castle
Attn: Rochelle Swanson, Government Affairs Manager, Northern California
One Park Place, Suite 300
Dublin, CA 94568

Subject: **Wireless Communication Facility Permit Applications for Six (6) WCF Nodes – Crown Castle Cluster 3 (Downtown North) [17PLN-00450]**

Dear Rochelle Swanson and Sharon James:

On October 8, 2019, the Director of Planning and Development Services (Director) denied Wireless Communication Facility (WCF) nodes referenced under file 17PLN-00450 (Downtown North) based upon the Findings for Denial in **Attachment A**. These Director's decisions (Denials) are for the following six (6) WCF nodes proposed on wood utility poles in the public right of way:

- Node 20, CPAU Pole #6474 (adjacent to 205 Everett Ave and also near 251 Emerson St)
- Node 21m1, CPAU Pole #6362 (adjacent to 301 Bryant St and also near 311 Everett Av)
- Node 22m2, CPAU Pole #6288 (adjacent to 258 Waverley St, replaced Node 22 near 386 Everett)
- Node 23, CPAU Pole #6350 (adjacent to 482 Everett Avenue)
- Node 24, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue)
- Node 32, CPAU Pole #6492 (adjacent to 201 High Street).

These denials are based upon the review of all information contained within the project file and the review of this information in comparison to applicable zoning and other municipal code requirements. They also take into consideration and are consistent with the recommendations of the Architectural Review Board, as expressed on January 17, 2019.

The action taken on these applications does not preclude you from filing a new WCF permit application(s) and the denials are without prejudice. To the extent that you believe that these denials preclude you from achieving your network goals, the City would consider new applications.

In accordance with the California Environmental Quality Act (CEQA), the denials are exempt from the California Environmental Quality Act (CEQA) per Public Resources Code Section 21080.b(5).

EFFECTIVE DATE FOR DECISIONS AND APPEALS PROCEDURE: The Director's decisions on each of the above referenced six (6) WCF nodes shall become final and effective fourteen (14) calendar days from the postmark date of the letter and notice card mailing (or on the next business day if it falls on a weekend or holiday), unless an appeal(s) is filed. Any appeal(s) shall be in writing and submitted to Planning and Development Services prior to the end of the business day of the fourteenth day. The Director's decisions

for those WCF nodes that are not appealed within this time shall become final, notwithstanding any timely appeal of one or more of the other nodes included in this letter.

In accordance with PAMC Section 18.42.110(g) and PAMC Section 18.42.110(h), any appeal(s) may be set for hearing before the City Council or may be placed on the City Council's consent calendar, pursuant to PAMC Section 18.77.070(f). The appeal form, which contains brief instructions, can be found on the City website (https://www.cityofpaloalto.org/civicax/filebank/documents/61907). Each appealed WCF node should be specifically listed by node number on the appeal form and in the letter stating the reason(s) for the appeal. In the event you assert that Federal law pre-empts any element of this decision, please provide all relevant evidence.

As outlined in the City's Fiscal Year 2020 Municipal Fee Schedule (https://www.cityofpaloalto.org/civicax/filebank/documents/73099), the cost to appeal one or more WCF nodes is the $595 appeal filing fee. In the event an appeal is filed, the applicant must provide an initial deposit of $3,811. As outlined in the Municipal Fee Schedule, this deposit and any additional funds are refunded if the City Council denies a third party appeal or upholds an applicant appeal.

Should you have any questions regarding the denials, please do not hesitate to contact Rebecca Atkinson, at (650) 329-2596, or e-mail Rebecca.Atkinson@CityofPaloAlto.org.

Sincerely,

Jonathan Lait, AICP, Director of Planning and Development Services

Cc:
Michael Miller, Crown Castle
Michael W. Shonafelt, Newmeyer & Dillion LLP
Sharon James, Government Relations Manager, Northern California
Rochelle Swanson, Project Manager, Western Region (Sure Site Address)
Molly Stump, City Attorney
Rebecca Atkinson, Planner

Attachment:
FINDINGS FOR DENIAL OF NODE 20, NODE 21M1, NODE 22M2, NODE 23, NODE 24, AND NODE 32 [17PLN-00450]

Attachment A:
FINDINGS FOR DENIAL OF NODE 20, NODE 21M1, NODE 22M2, NODE 23, NODE 24, AND NODE 32
[17PLN-00450]

Background

Prior to receipt of Crown Castle Cluster 3 (17PLN-00450), Crown Castle filed a Preliminary Architectural Review application that was discussed by the Architectural Review Board on September 21, 2017 (ID # 8309, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/61856). After their presentation on September 21, 2017, Crown Castle adjusted the proposed location of one WCF node and made a change to the design configuration to include a shroud design for the wood bayonet extension.

The City received applications for the six (6) Wireless Communication Facility (WCF) nodes in Crown Castle Cluster 3 (17PLN-00450) on December 13, 2017. While each WCF node requires its own Wireless Communication Facility permit, the proposed locations were grouped together into a Cluster for processing to allow coordinated City review and transparency to members of the public about what is proposed in their neighborhoods.

Prior to the January 17, 2019 Architectural Review Board meeting for Crown Castle Cluster 3 (17PLN-00450), Crown Castle indicated to staff that they wanted to hear feedback from the ARB, the public, and the City's subconsultants prior to adjusting their plans to respond to staff comments already presented during the review process regarding node locations and facility design configurations.

The Director identified items that remained outstanding for Crown Castle to address in the staff reports dated December 6, 2018 (ID # 9351, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/68006) and January 17, 2019 (ID # 9961, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/68420).

Staff regularly contacted Crown Castle subsequent to the January 17, 2019 Architectural Review Board meeting; planning staff sent follow up emails with no substantive response from Crown Castle, although Crown Castle suggested in some communications that project plans and other materials may be forthcoming, including in regard to design modifications, refined antenna placement, and perfecting the network.

The current tolling agreement, which was mutually agreed to and signed by representatives of Crown Castle and the City on September 16, 2019, requires decisions by the City on the WCF nodes in Crown Castle Cluster 3 (17PLN-00450) by November 18, 2019.

On September 17, 2019, staff received communication that Crown Castle was in a 'holding pattern' on how to proceed with the project.

The six WCF nodes in Crown Castle Cluster 3 were described as Tier 3 Wireless Communication Facilities under the Palo Alto Municipal Code in effect at the time of formal application receipt, with approval subject to PAMC section 18.42.110(h) (2017/2018). The City subsequently updated its wireless ordinance in April 2019 to comply with the FCC guidance and regulations effective January 2019. Under the current City ordinance, these six WCF nodes are classified as Tier 2, subject to approval in 18.42.110(g) (2019). For the applicant's convenience, findings for denial below are presented separately under both standards.

Standard for Approval or Denial
<u>2017 / 2018</u> Palo Alto Municipal Code (PAMC) Section 18.42.110(h)(2)-(3) [Tier 3]

(2) The Director or Council on appeal shall grant a Tier 3 WCF permit provided the proposed WCF complies with the Development Standards in Section 18.42.110(i), and the conditions of approval in Section 18.42.110(j), and all of the architectural review findings in Section 18.76.020(d) and the conditional use permit findings in Section 18.76.010(c) can be made.

(3) The Director, or Council on appeal, shall deny a Tier 3 WCF Permit if the findings above cannot be made.

A. Findings for Denial 2017/2018 Standard:

1. The Director finds that each of the six nodes fails to meet one or more of the applicable Development Standards in PAMC Section 18.42.110(i) (2017/2018), as detailed below.

2. The Director finds that each of the six nodes fails to meet all the architectural review findings in Section 18.76.020(d), as detailed below, and as discussed by the Architectural Review Board on January 17, 2019.[1]

3. The Director finds that each of the six nodes fails to meet all the conditional use permit findings in Section 18.76.010(c), as detailed below.

<u>Finding A-1 - WCF compliance with Development Standards, PAMC 18.42.110(i)</u>

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the Development Standards in **PAMC Section 18.42.110(i)(1) through (11)** is outlined below:

1. All six nodes fail to meet Development Standard 1, that each WCF *"shall utilize the smallest footprint possible."* The design of the WCF nodes in Crown Castle Cluster 3 does not utilize the smallest footprint possible. Specifically:
    - The proposed designs increase the footprint of the existing wood utility pole itself in a highly noticeable and visually intrusive manner because the conduit(s) running along the pole utilize multiple standoff brackets that increase the overall diameter of the WCF and create visible gaps between the conduit and the existing pole (see Project Plans, Sheets D-5, P-3, and P-4), rather than mounting the conduit(s) flush to the pole.
    - The radio equipment in the proposed design extends horizontally beyond the minimum necessary and employs a configuration that is not the smallest footprint. Project Plans Sheet D-4 calls for a separation of the RRU-32s to be six inches from the pole and is inconsistent with Sheets P-3 and P-4 that note a separation of three-inches. Utilizing the six-inch separation on Sheet D-4, the unshrouded RRU-32s extend over two-feet horizontally from the pole. Regardless of the aforementioned inconsistencies in the project plans, if the RRU-32s were mounted parallel instead of perpendicular to the pole, then the WCF could be more horizontally compact, would be arranged to form a slim profile by using vertical alignment of the equipment rather than the current proposal which shows the equipment 'sandwiching' the bracket, and would have a smaller footprint.

[1] Meeting minutes can be found online: https://www.cityofpaloalto.org/gov/boards/architectural/default.asp. The draft January 17, 2019 meeting minutes were approved as corrected on February 1, 2019.

- In the absence of a detailed analysis that investigated the feasibility of placing WCF node equipment in underground vaults at the proposed locations or elsewhere, the City cannot conclude that the footprint of the proposed side-mounted equipment is the smallest possible, or if it could be smaller through placement of the radio and other equipment in underground vaults.

2. All six nodes fail to meet Development Standard 2, that each WCF *"shall be designed to minimize the overall height, mass, and size of the cabinet and enclosure structure."* The design of the WCF nodes in Crown Castle Cluster 3 does not minimize the overall height, mass, and size of the cabinet and enclosure structure. Specifically:
   - The application materials did not contain information on how overall height of the proposed design could be minimized by utilizing smaller antennas, which is discussed in the CTC report.
   - The diameter of the wooden bayonet shroud shown on Project Plans Sheet D-6 for all nodes is generally proposed to be the diameter of the antenna, which is wider and creates more mass and size/volume than the tapered minimum necessary to shroud and conceal the wooden bayonet extension and conduit.
   - As stated in Section A-1 paragraph 1 above, the proposed design utilizes standoff brackets to create separation between the conduits and the pole and consequently does not minimize the overall mass and size/volume of an enclosure structure.
   - As stated in Section A-1 paragraph 1 above, the proposed design horizontally extends for more than what is necessary from the pole. Using the placement of the standoff brackets as an approximate from which to estimate the mass and size of a cabinet or enclosure structure, the overall mass and volume of a related enclosure would extend further from the pole than what would be necessary if the RRU-32s were mounted parallel to the pole. Furthermore, the top of the cabinet or enclosure structure would need to be higher than the top of the proposed RRU-32s mounting brackets in order to shroud and conceal the currently exposed cables/wires extending from the equipment into the conduit. This design would not minimize overall height, mass, and size of an enclosure structure.

3. All six nodes fail to meet Development Standard 3, that each WCF *"shall be screened from public view."* The design of the WCF nodes in Crown Castle Cluster 3 is not screened from public view. Specifically:
   - Although a shroud for the wooden bayonet extension is proposed, Project Plans Sheet D-6 used for all nodes clarifies that the shroud does not fully extend over the conduit and risers, nor does it extend downwards to the top of the existing pole; given the gaps noted on Sheet D-6, the proposed design does not screen all of the WCF node components proposed near the top of the existing pole.
   - The proposed design does not screen the radio and other equipment, cabling, and mounting brackets, either by use of metal shrouds that are painted to match the existing wood utility poles or through other means; the side mounted radio and other equipment, cabling, and mounting brackets are entirely unscreened on each pole.
   - The proposed design has conduit(s) running along the pole that utilize multiple standoff brackets to increase the overall diameter of the WCF and to create visible gaps between the conduit and the existing pole (see Project Plans Sheets D-5, P-3, and P-4 for all nodes), rather than mounting the conduit(s) flush to the pole. The mounting brackets for the conduit near the top of the pole are not shown in the visual simulations, but they are noted on the elevations in the project plans.
   - Furthermore, amenity trees are not proposed at four (4) WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the node and ensure appropriate screening. Additionally, the selected pole for Node 32 is highly visible and there isn't a readily available opportunity to plant an amenity tree to help interrupt direct views of the proposed WCF.

- Additionally, the proposed orientation of the equipment at some nodes increases their visibility within the public right of way:
    i. Instead of proposing an installation that is parallel to the travel way, Node 21m1 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a comparatively wider and more highly visible deployment when viewed from the right of way.
    ii. Instead of proposing an installation that faces away from an intersection, Node 23 is proposed to face toward an intersection without any screening.
    iii. Instead of proposing an installation that is parallel to the travel way, Node 32 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a comparatively wider and more highly visible deployment when viewed from the right of way.

4. All six nodes fail to meet Development Standard 4, that each WCF *"shall be architecturally compatible with the existing site."* The design of the WCF nodes in Crown Castle Cluster 3 is not architecturally compatible with the existing site; on January 17, 2019, the Architectural Review Board considered the architectural compatibility and aesthetics of the pole-mounted equipment as a significant basis for their recommendation to deny the six (6) WCF nodes in Crown Castle Cluster 3, specifically citing that the proposed design was not unified and coherent in a manner that enhances living conditions on the site and in adjacent residential areas.

5. All six nodes fail to meet Development Standard 6, that *"an antenna, base station, or tower shall be designed to minimize its visibility from off-site locations and shall be of a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the antenna, base station, or tower into the surrounding area."* The design of the WCF nodes in Crown Castle Cluster 3 does not minimize its visibility from off-site locations and does not use a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the antenna, base station, or tower into the surrounding area. For instance:
    - Although a shroud for the wooden bayonet extension is proposed, Project Plans Sheet D-6 for all nodes clarifies that the shroud does not fully extend over the conduit and risers, nor does it extend downwards to the top of the existing pole; given the gaps noted on Sheet D-6, the proposed design does not screen all of the WCF node components proposed near the top of the existing pole.
    - The proposed design does not screen the radio and other equipment, cabling, and mounting brackets, either by use of metal shrouds that are painted to match the existing wood utility poles or through other means; the side mounted radio and other equipment, cabling, and mounting brackets are entirely unscreened on each pole.
    - The proposed design has conduit(s) running along the pole that utilize multiple standoff brackets to increase the overall diameter of the WCF and to create visible gaps between the conduit and the existing pole (see Project Plans Sheets D-5, P-3, and P-4 for all nodes), rather than mounting the conduit(s) flush to the pole. Note that the mounting brackets for the conduit near the top of the pole are not shown in the visual simulations, but they are noted on the elevations in the project plans.
    - Furthermore, amenity trees are not proposed at four (4) WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the node and ensure appropriate screening. Additionally, the selected pole for Node 32 is highly visible and there isn't a readily available opportunity to plant an amenity tree to help interrupt direct views of the proposed WCF.
    - Additionally, the proposed orientation of the equipment at some nodes increases their visibility within the public right of way:
        i. Instead of proposing an installation that is parallel to the travel way, Node 21m1 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a

comparatively wider and more highly visible deployment when viewed from the right of way.

ii. Instead of proposing an installation that faces away from an intersection, Node 23 is proposed to face toward an intersection without any screening.

iii. Instead of proposing an installation that is parallel to the travel way, Node 32 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a comparatively wider and more highly visible deployment when viewed from the right of way.

Finding A-2 – WCF compliance with Architectural Review Findings, PAMC Section 18.76.020(d)

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the architectural review findings in **PAMC Section 18.76.020(d)** is outlined below.

1. All six nodes fail to meet architectural review finding 1, that *"The design is consistent with applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides."* As outlined in Section A-1 above, the design of the WCF nodes in Crown Castle Cluster 3 does not comply with one or more of the development standards in PAMC 18.42.110(i). As outlined in Section A-3 below, there several goals and policies in the City's Comprehensive Plan that are not met by the design of the WCF nodes in Crown Castle Cluster 3. Therefore, the design of the WCF nodes in Crown Castle Cluster 3 does not comply with all applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides.

2. All six nodes fail to meet the following elements of architectural review finding 2, that *"The project has a unified and coherent design, that:"*

   A. Creates an internal sense of order and desirable environment for occupants, visitors, and the general community. The design of the WCF nodes in Crown Castle Cluster 3 does not shroud, conceal, or camouflage the proposed radio and other equipment, cabling, and mounting brackets. The design hangs in a discordant manner to the pole leaving gaps between the components and visual exposure of the many different pieces and sizes of equipment. The design does not use the smallest footprint possible as required by code. Consequently, the design negatively affects the desirability of the environment for occupants, visitors, and the general community.

   D. Provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations. The design of the WCF nodes in Crown Castle Cluster 3 does not meet this finding, as the WCF nodes are not designed to blend in with the existing character of or adjacent land uses, have more mass than necessary, and are visually intrusive due to the lack of screening, concealment, and camouflage.

   E. Enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas. On January 17, 2019, the Architectural Review Board considered the architectural compatibility and aesthetics of the pole-mounted equipment as a significant basis for their recommendation to deny the six (6) WCF nodes in Crown Castle Cluster 3, specifically citing that the proposed design was not unified and coherent in a manner that enhances living conditions on the site and in adjacent residential areas. The design of the WCF nodes in Crown Castle Cluster 3 does not shroud, conceal, or camouflage the proposed radio and other equipment, cabling, and mounting brackets, and the conduit is not mounted flush to the pole. Instead, the design appears to hang in a discordant manner to the pole leaving gaps between the components and visually exposing the many different pieces and sizes of equipment. The proposed project does not include residential uses itself. However, the design of the WCF nodes in Crown Castle Cluster 3 does not enhance the living conditions in

adjacent residential areas, as the design does not comply with one or more of the City's development standards (as outlined in Section A-1 above) and several Comprehensive Plan goals and policies (as outlined in Section A-3 below).

3. All six nodes fail to meet architectural review finding 3, that *"The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding."* The design of the WCF nodes in Crown Castle Cluster 3 does not meet this finding, as the design does not shroud, conceal, or camouflage the proposed radio and other equipment, cabling, and mounting brackets and the conduit is not mounted flush to the pole. Instead, the design appears to hang in a discordant manner to the pole leaving gaps between the components and visual exposure of the many different pieces and sizes of equipment.

4. All six nodes fail to meet the architectural review finding 4, that *"The design is functional, allowing for ease and safety of pedestrian and bicycle traffic and providing for elements that support the building's necessary operations (e.g. convenient vehicle access to property and utilities, appropriate arrangement and amount of open space and integrated signage, if applicable, etc.)."* The design of the WCF nodes in Crown Castle Cluster 3 fails to demonstrate that each node would have adequate horizontal clearance while not facing private property or extending over adjacent sidewalks, affecting the ease and safety of pedestrian and bicycle traffic. Furthermore, the proposed design is not shown to provide adequate vertical clearance over sidewalks, which is a required 10 feet in the City's standard conditions of approval, and affects the ease and safety of pedestrian and bicycle traffic.

5. Four of the six nodes fail to meet architectural review finding 5, that *"The landscape design complements and enhances the building design and its surroundings, is appropriate to the site's functions, and utilizes to the extent practical, regional indigenous drought resistant plant material capable of providing desirable habitat that can be appropriately maintained."* Node 20, Node 21m1, Node 22m2, and Node 23 do not meet this finding, as those WCF nodes do not include the use of amenity trees to provide screening where it would be possible.

Finding A-3 – WCF compliance with Conditional Use Permit Findings, PAMC Section 18.76.010(c)

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the conditional use permit findings in **PAMC Section 18.76.010(c)** is outlined below:

1. All six nodes fail to meet conditional use permit finding 1, that *"The project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience."* The Crown Castle Cluster 3 application materials do not clearly demonstrate that development standards-compliant WCF node designs would be mounted and installed in a manner that complies with the following safety regulations, specifically:
    - adherence to Federal Communications Commission standards, including those in FCC Bulletin OET 65,
    - adherence to California Public Utilities Commission (CPUC) General Order (GO) 95 requirements, with regard to equipment mounting orientation not precluding access to the required climbing space on the pole, providing vertical separation of antennas from electric lines, ensuring the post-installation structural integrity of the pole, and providing compliant attachment and mounting details and materials,
    - providing at least minimum horizontal and/or vertical clearance from intersections, curblines, and the travel way for pedestrians, bicycles, and vehicles (which is important for the operation of bicycle lanes, red curb zones, on-street parking spaces for standard height vehicles as well as oversized delivery

vehicles, etc.).

- providing at least minimum sight line clearance at intersection street corners, including at least a minimum of three foot horizontal clearance from corners to ensure visibility and safety.
- prevention of obstructions to pedestrian and bicycle flow in general and especially on narrow sidewalks any busy sidewalks.

Furthermore, there is less than the required 1.5 feet of horizontal clearance between the existing pole and the adjacent curbline at the following five (5) node locations, resulting in the inability to provide the horizontal clearance while also not facing private property or extending over existing sidewalks:

- Node 20, CPAU Pole #6474 (adjacent to 205 Everett Avenue and also near 251 Emerson Street)
- Node 21m1, CPAU Pole #6362 (adjacent to 301 Bryant Street and also near 311 Everett Avenue)
- Node 23, CPAU Pole #6350 (adjacent to 482 Everett Avenue)
- Node 24, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue)
- Node 32, CPAU Pole #6492 (adjacent to 201 High Street).

2. All six nodes fail to meet conditional use permit finding 2, that *"The project is located and conducted in a manner in accord with the Palo Alto Comprehensive Plan and the purposes of this title (Zoning)."* The City's Municipal Code provides a process to permit WCF's that blend with their existing surroundings and do not negatively impact the environment, historic properties, or public safety. As outlined in Section A-1 above, the design of the WCF nodes in Crown Castle Cluster 3 does not comply with one or more of the development standards in PAMC 18.42.110(i). As outlined here, there several goals and policies in the City's Comprehensive Plan that are not met by the design of the WCF nodes in Crown Castle Cluster 3:
    - The design of the WCF nodes in Crown Castle Cluster 3 prevents the finding of consistency with Comprehensive Plan GOAL L-4/POLICY L-4.7/POLICY L-4.8, which emphasize maintaining and enhancing the downtown area by promoting quality design that recognizes the regional and historic importance of the area, reinforces its pedestrian character, and that creates an environment that is inviting to pedestrians and bicyclists. The proposed design fails to minimize its footprint, is not screened from public view, has more mass than necessary, and has other aesthetic challenges as outlined in Section A-1 above, and does not provide adequate horizontal and vertical clearances for pedestrians, bicyclists, and vehicles as outlined above in Section A-3 paragraph 1.
    - The design of the WCF nodes in Crown Castle Cluster 3 prevents the finding of consistency with Comprehensive Plan GOAL L-9/POLICY L-9.3/POLICY L-9.4/POLICY L-9.5/POLICY L-9.10/PROGRAM L9.10.2, which emphasize creating attractive, inviting public spaces and streets that enhance the image and character of the City, treating residential streets a public ways and neighborhood amenities, promoting walking and "active transportation," and preserving and enhancing publicly accessible, shared outdoor gathering spaces within walking and biking distance of residential neighborhoods, designing utility structures to meet high-quality design standards and embrace technological advances, and encourage the use of compact and well-designed utility elements such as telecommunications infrastructure and place these elements in locations that will minimize their visual intrusion. As discussed by the Architectural Review Board and as outlined in Section A-1 above, the design is visually intrusive and is not compact, does not utilize the smallest footprint possible or minimize mass, and is not unified and coherent in a manner that enhances living conditions on the site and in adjacent residential areas.
    - The design of the WCF nodes in Crown Castle Cluster 3 prevents the finding of consistency with Comprehensive Plan GOAL T-6 that emphasizes providing a safe environment for motorists, pedestrians, and bicyclists because the design does not provide adequate

horizontal and vertical clearances for pedestrians, bicyclists, and vehicles as outlined above in Section A-3 paragraph 1.

In staff reports dated December 6, 2018 (ID # 9351, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/68006) and January 17, 2019 (ID # 9961, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/68420), the Director identified many design concepts under the Palo Alto Comprehensive Plan and PAMC Section 18.42.110 and other codes that remained outstanding for Crown Castle to address with a response in order to meet the findings in effect for 2017/2018, including:

- Discussion of vaulting of equipment,
- Ensuring that no sky shall be seen through the mounting and attachment equipment for the antennas and the conduits,
- Reducing the standoff distance for pole mounted equipment,
- Utilization of shrouding for pole mounted equipment,
- Reducing the volume of pole mounted equipment,
- Maintaining required climbing space while also not having pole mounted equipment face directly toward adjacent private property or extend over sidewalks,
- Maintaining minimum horizontal and vertical clearances:
    - At least 1.5-feet horizontal clearance between any new or relocated equipment and the adjacent face of curb or edge of traveled way for any public roadway, driveway, or alley, unless 16-feet vertical clearance is provided between equipment and the top of adjacent travel way,
    - At least 3-feet of horizontal clearance from driveways or corners, and
    - At least 10-feet vertical clearance between the adjacent sidewalk, path, or walkway grade.
- Clarifying cohesiveness and integration of the design in regard to:
    - the shape, design, color, and materiality of the antenna shroud, as well as how far it extends from the base of the antenna to the top of the existing pole,
    - the cables in the conduit into the bottom of the antenna shroud, and
    - any separation of the conduit from the top and mid-section of the pole, given that the pole has some tapering.
- Any pole-mounted equipment must:
    - not face the street or adjacent properties,
    - not extend over the sidewalk,
    - be positioned to ensure the equipment meets minimum horizontal and vertical clearances relative to driveways, corners, and curblines,
    - be screened by a painted metal shroud,
    - be arranged to form a slim profile - using vertical alignment of the equipment rather than the current proposal which shows the equipment 'sandwiching' the bracket.

In order to meet the findings in effect in 2017/2018, staff also identified opportunities to plant new or replacement amenity trees at four WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the node, contribute to a more cohesive site specific design, and help maintain neighborhood character. Staff further identified that the side-mounted equipment proposed for Node 23 and Node 24 is near and/or face existing short transfer poles and that the transfer poles adjacent to Node 23 and Node 24 should be removed.

The staff reports also incorporate and discuss the City's subconsultant report, prepared by CTC and dated

December 2018. Staff disseminated the CTC report to Crown Castle in hardcopy form on December 6, 2018, electronic form on December 13, 2018, and as an attachment to the January 17, 2019 staff report. The Architectural Review Board discussed the staff reports and the CTC report on January 17, 2019. CTC's analysis noted that it may be possible to reduce visual impacts by reducing the size of the components (antennas and related equipment), by camouflaging the equipment cabinets in some way, by placing equipment in underground vaults, and/or by considering a microcell architecture as a viable alternative.

Based on the foregoing and information contained in the administrative record, each of the WCF nodes cannot be found as consistent with the City's Comprehensive Plan and the purposes of zoning.

Standard for Approval or Denial
2019 Palo Alto Municipal Code Section 18.42.110(g)(2)-(3) [Tier 2]

(2) The Director, or Council on appeal, shall grant a Tier 2 WCF Permit provided the proposed WCF complies with the conditions of approval in Section 18.42.110(j) and all objective standards adopted and amended from time to time by resolution of the City Council or the development standards in Section 18.42.110(i). If such objective standards are repealed, an application shall not be granted unless, in addition to the other requirements of this section, all of the architectural review findings in Section 18.76.020(d) can be made.

(3) The Director, or Council on appeal, shall deny a Tier 2 WCF Permit if the above findings cannot be made.

B. Findings for Denial (2019) Standard:

1. The Director finds that each of the six nodes fails to meet one or more of the objective standards adopted by resolution of the City Council, as detailed below; or

2. In the alternative, the Director finds that each of the six nodes fails to meet one or more of the generally applicable development standards in PAMC Section 18.42.110(i), as detailed below:

Finding B-1 - WCF compliance with Objective Aesthetic, Noise, and Related Standards for Wireless Communication Facilities in the Public Rights of Way ("Wireless Administrative Standards")

1. The proposed design for the six (6) WCF nodes proposed in Crown Castle Cluster 3 (17PLN-00450) does not comply with one or more of the City's current Wireless Administrative Standards. Specifically, the proposed design:
   - does not match any of the four standard designs approved by the City: a) Underground design, b) Top-mounted design, c) Minimal sunshield design, or d) Existing signage.
   - does not include a single integrated shroud and "antenna skirt" that meets the pole without any gaps.
   - does not show conduit as mounted flush to the pole.
   - does not show all shrouds and equipment designed without gaps between materials or sky visible between component surfaces.

   Furthermore, the Project Plans show:
   - A total height that exceeds 55 feet for three (3) WCF nodes (Node 21m1, Node 22m2, and Node 23).
   - The absence of amenity trees at four (4) WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the WCF equipment. Additionally, the selected pole for Node 32

is highly visible and there isn't a readily available opportunity to plant an amenity tree to help interrupt direct views of the proposed WCF.

- That there is less than the required 1.5 feet of horizontal clearance between the existing pole and the adjacent curbline at the following five (5) node locations, resulting in the inability to provide the horizontal clearance while also not facing private property or extending over existing sidewalks:
  - Node 20, CPAU Pole #6474 (adjacent to 205 Everett Avenue and also near 251 Emerson Street)
  - Node 21m1, CPAU Pole #6362 (adjacent to 301 Bryant Street and also near 311 Everett Avenue)
  - Node 23, CPAU Pole #6350 (adjacent to 482 Everett Avenue)
  - Node 24, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue)
  - Node 32, CPAU Pole #6492 (adjacent to 201 High Street).

Based on the foregoing and information contained in the administrative record, each of the WCF nodes cannot be found as consistent with the City's Wireless Administrative Standards.

Finding B-2 - WCF compliance with Generally Applicable Development Standards, PAMC 18.42.110(i)

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the Development Standards in **PAMC 18.42.110(i)** is outlined below:

1. All six nodes fail to meet Development Standard 1, that each WCF *"shall utilize the smallest antennae, radio, and associated equipment, as measured by volume, technically feasible to achieve a network objective,"* as outlined above in Section A-1 under paragraphs 1 and 2.

2. All six nodes fail to meet Development Standard 2, that each WCF *"shall be screened from public view,"* as outlined above in Section A-1 under paragraph 3.

3. All six nodes fail to meet Development Standard 3, that each WCF *"when attached to an existing structure, shall be shrouded or screened using materials or colors found on existing structure."* The design of the WCF nodes in Crown Castle Cluster 3 proposes to paint some or all of the mounted equipment Sherwin Williams Well-Bread brown, which is a paint color that is similar to the color of a new or fairly new wood utility pole. However, it is not clear from the application materials if the exposed cables/wires would also be painted this color, and, regardless, the design is not shrouded.

4. All six nodes fail to meet Development Standard 5, that for each WCF, *"an antenna, base station, or tower shall be of a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the antenna, base station, or tower into the surrounding area, such as the use of a monopine design,"* as outlined above in Section A-1 under paragraph 5.

CITY OF PALO ALTO
Office of the City Clerk
APPEAL FROM THE DECISION OF DIRECTOR OF PLANNING AND COMMUNITY ENVIRONMENT*

For appeals of final decisions on Architectural Review Board and Home Improvement Exception applications (rendered after public hearing), this appeal form shall be completed and submitted by appellant within fourteen days from date of the Director's decision. Appeals of final decisions on Individual Review applications (rendered after public hearing) must be submitted within ten days of the Director's decision. Complete form, the current fee and a letter stating reasons for the appeal shall be submitted to front desk staff of the Planning Division, 5th floor, City Hall, 250 Hamilton Avenue, *except* for 980 Fridays when City Hall is closed, when these items shall be submitted to Planning staff at the Development Center, 285 Hamilton Avenue (glass storefront across from City Hall on the corner of Bryant and Hamilton).

* Director of Planning includes his designees, which are Planning Managers or the Chief Planning Official

Appeal Application No. ~~17PLN-00450~~ 19-AP-03 Receipt No. 2019296001-27

Name of Appellant Crown Castle Fiber LLC c/o Michael W. Shonafelt Phone ( ) 949.854.7000

Address 895 Dove Street, 5th Floor, Newport Beach, CA 92660 Newport Beach, California 92660

Street City ZIP

LOCATION OF PROPERTY SUBJECT TO APPEAL:

Street Address See Attached Letter (multiple public rights-of-way)

Name of Property Owner (if other than appellant) City of Palo Alto

Property Owner's Address See attached

Street City ZIP

The decision of the Director of Planning and Community Environment dated October 9, 2019

whereby the application 17PLN-00450 (file number) by Crown Castle NG West, LLC (predecessor to Crown Castle Fiber LLC) (original project applicant)

was denied (approved/denied), is hereby appealed for the reasons stated in the attached letter (in duplicate)

Date: October 23, 2019 Signature of Appellant Sharon James for Crown Castle Fiber LLC

PLANNING COMMISSION RECOMMENDATION TO THE CITY COUNCIL (TO BE FILLED OUT BY STAFF):

Date _____ Approved _____ Denied _____

Remarks and/or Conditions:

CITY COUNCIL DECISION (TO BE FILLED OUT BY STAFF):

Date _____ Approved _____ Denied _____

Remarks and/or Conditions:

SUBMITTAL REQUIREMENTS SATISFIED:

1. Letter stating reasons for appeal _____ Received by: _____
2. Fee (currently $280.00) _____ Received by: _____

City of Palo Alto Revenue Collections

Received From: Crown Castle LLC c/o Michael W. Shanafelt Date: 10/23/19

In Payment Of Appeal Filing Fee By:

ITEM Planning - Rebecca

( ) Certified Mail Fee	40050009	18990	$	.
( ) False Alarm Late Fee	70020002	13110	$	.
( ) Miscellaneous Revenue	10200000	18990	$	.
( ) Transient Occupancy Tax	10200000	11850	$	.
( ) Sales Tax	10200000	60050	$	.
( ) Utility User Tax	10300000	11870	$	.
( ) ZoneMapSales	60020201	17030	$	.
( ) Univ Ave Parking	23600000	14510	$	.
( ) Calif Ave Parking	23700000	14520	$	.
( ) Lot S Parking	23600000	14500	$	.
(X) Other	60020402	14890	$ 595	.00
		Total	$	.

Copies to:

22-37 REV 10/03

Cash ( ) Check ( ) CC

2019296001-27 1 10/23/2019 Rev_Collections
F_MISC CROWN CASTLE - APPEAL FILING FEE $595.
00

City of Palo Alto
Revenue Collections
Date/Time: 10/23/2019 12:23:37 PM
VISA: **********2761 S
Sale Amt: $595.00
Auth Code: 04709D
Receipt Number: 2019296001-27
*** Customer Copy ***

City of Palo Alto
City of Palo Alto
Revenue Collection
Reference Number: 2019296001-27
Date/Time: 10/23/2019 12:23:37 PM
Miscellaneous
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Reference: CROWN CASTLE - APPEAL FILING FE
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Allocation 29 1@ $595.00
GL #: 60020402..14890...
Total: $595.00

1 ITEM TOTAL: $595.00

TOTAL: $595.00

VISA $595.00
Credit Card Nbr: **********2761
Payer Lname: HANSEN
Payment Type: VeriFone
Total Received: $595.00

CE201929600 1-27

NEWMEYER DILLION

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

19 OCT 23 PM 12:35

Newmeyer & Dillion LLP
895 Dove Street
Fifth Floor
Newport Beach, CA 92660
949 854 7000

October 23, 2019

Michael W. Shonafelt
Michael.Shonafelt@ndlf.com

VIA PERSONAL SERVICE

Mayor Filseth and Councilmembers of the
Palo Alto City Council
City Hall – Planning Division, Fifth Floor
250 Hamilton Avenue, Palo Alto, CA, 94301

Re: APPEAL of the Director of Planning and Community Environment Decision on Six Pending Applications for Wireless Communications Facilities Permits Pursuant to Palo Alto Municipal Code section 18.77.070(f) – Crown Castle Cluster 3 (17PLN-00450).

Dear Mayor Filseth:

This office represents Crown Castle Fiber LLC, successor to Crown Castle NG West, LLC ("Crown Castle") in the above-referenced matter related to six pending applications for wireless communications facility permits ("Applications").[1] This letter constitutes Crown Castle's appeal of the City of Palo Alto's ("City") Director of Planning and Community Environment's ("Director") decision to deny six wireless communication facilities ("Nodes") pursuant to Palo Alto Municipal Code ("PAMC") section 18.77.070(f) ("Appeal"). This Appeal is timely filed pursuant to the written requirements prescribed by the Director, pursuant to PAMC section 18.77.070(f). A brief summary of the grounds for the appeal follows.

Please note that Crown Castle reserves the right to supplement this letter and/or present additional evidence and grounds for the Appeal up to the date of the hearing on this Appeal.

1. **Violation of 47 U.S.C. § 332(c)(7)(B)(iii): The Director's Decision Does Not Rest on Substantial Evidence**: The Director's decisions and findings are not supported by substantial evidence, and in many instances are based on mere speculation and conclusion. The Director's decision contains no node-by-node factual analysis and otherwise contain no reasoning to which Crown Castle can adequately respond. (See Pub. Resources Code, § 21080, subd. (e)(2) ["[s]ubstantial evidence is not argument, speculation, unsubstantiated opinion or

[1] A list of the proposed Node sites is attached herewith as Exhibit A.

narrative, [or] evidence that is clearly inaccurate or erroneous . . . ."]; *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 [agency "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order."].) The failure to base the denial on substantial evidence violates federal law. (47 U.S.C. § 332(c)(7)(B)(iii) [requiring state and local governments to have substantial evidence when denying requests to construct or modify wireless services facilities].) '

2. **Violation of 47 U.S.C. § 332(c)(7)(i)(II): The Denials Result in a Prohibition of Service**: The Director's denials materially inhibit Crown Castle's ability to compete in a fair and balanced legal and regulatory environment, in violation of 47 U.S.C. § 332(c)(7)(B)(i)(II). Among other things, the denials represent a misplaced and unlawful effort by the City to regulate Crown Castle's technology by imposing aesthetic requirements, such as size restrictions, that preclude delivery of Crown Castle's proposed 4-G communications network.

3. **Violation of 47 U.S.C. § 253: The Denials Rest on Prohibitory Requirements that Are Preempted by Federal Law:** The City's design constraints force applicants to deploy lower power radios and smaller antennas that cannot support 4-G systems. Those constraints therefore represent an unlawful attempt to regulate a matter that is preempted by federal law. "Congress intended the FCC to possess exclusive authority over technical matters related to radio broadcasting" and that "Congress's grant of authority to the FCC was intended to be exclusive and to preempt local regulation." (*Freeman v. Burlington Broadcasters, Inc.* (2d Cir. 2000) 204 F.3d 311 at 320-21, emphasis added; accord *Southwestern Bell Wireless Inc. v. Johnson County Bd. of County Comm'rs* (10th Cir. 1999) 199 F.3d 1185, 1193 ["Congress intended federal regulation of [radio frequency interference]; *N.Y. SMSA Ltd. P'ship v. Town of Clarkstown* (2nd Cir. 2010) 612 F.3d 97 [issues to be so pervasive as to occupy the field."] *Bennett v. T-Mobile United States, Inc.*, (C.D. Cal. 2008) 597 F. Supp. 2d 1050, 1053 [same principle, Central District].) The City's approval criteria also impose onerous standards (e.g., requiring that WCFs use the "smallest footprint possible"). Such standards impose impermissibly vague thresholds for approval, and vest staff with excessive discretionary authority to issue arbitrary denials.

4. **Violation of 47 U.S.C. § 253(c): The Director's Denials Impose a Discriminatory Barrier to Market Entry**: The Director's denials discriminate against Crown Castle, in violation of the 47 U.S.C. § 253(a), (c). Among other things, the denials discriminate against applicants that seek to deploy 4G technologies, which require larger radio sizes to operate. Additionally, the City's requirements allow ROW users such as Pacific Gas and Electric to operate transformers in the ROW, while denying Crown Castle's applications based on use of similar installations.

5. **The Director's Denials Violate Crown Castle's Statewide Franchise Rights Under California Public Utilities Code Section 7901**: Crown Castle's special regulatory status as a competitive local exchange carrier ("CLEC") gives rise to a vested right under Public Utilities Code section 7901 to use the City ROW to "construct . . . telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State" and to "erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway[.]" (Pub. Util. Code, § 7901; *Williams Communications v. City of Riverside* (2006) 114 Cal.App.4th 642, 648; *County of L. A. v. Southern Cal. Tel. Co.* (1948) 32 Cal.2d 378, 384.) The denials manifest a City program to pre-condition entry into the ROW on adoption of certain pre-approved technologies. It therefore operates as the equivalent of a ROW franchise in violation of Public Utilities Code sections 7901 and 7901.1.

For the foregoing reasons, among others, the City Council should grant this Appeal and approve the Applications.

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

Very truly yours,

Michael W. Shonafelt

MWS:mws

2464.109 / 8453716.2

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE
19 OCT 23 PM 12:35

PLANNING & COMMUNITY ENVIRONMENT
CITY OF PALO ALTO
250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
650.329.2441

October 9, 2019

Crown Castle
Attn: Rochelle Swanson, Government Affairs Manager, Northern California
One Park Place, Suite 300
Dublin, CA 94568

Subject: Wireless Communication Facility Permit Applications for Six (6) WCF Nodes – Crown Castle Cluster 3 (Downtown North) [17PLN-00450]

Dear Rochelle Swanson and Sharon James:

On October 8, 2019, the Director of Planning and Development Services (Director) denied Wireless Communication Facility (WCF) nodes referenced under file 17PLN-00450 (Downtown North) based upon the Findings for Denial in **Attachment A**. These Director's decisions (Denials) are for the following six (6) WCF nodes proposed on wood utility poles in the public right of way:

- Node 20, CPAU Pole #6474 (adjacent to 205 Everett Ave and also near 251 Emerson St)
- Node 21m1, CPAU Pole #6362 (adjacent to 301 Bryant St and also near 311 Everett Av)
- Node 22m2, CPAU Pole #6288 (adjacent to 258 Waverley St, replaced Node 22 near 386 Everett)
- Node 23, CPAU Pole #6350 (adjacent to 482 Everett Avenue)
- Node 24, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue)
- Node 32, CPAU Pole #6492 (adjacent to 201 High Street).

These denials are based upon the review of all information contained within the project file and the review of this information in comparison to applicable zoning and other municipal code requirements. They also take into consideration and are consistent with the recommendations of the Architectural Review Board, as expressed on January 17, 2019.

The action taken on these applications does not preclude you from filing a new WCF permit application(s) and the denials are without prejudice. To the extent that you believe that these denials preclude you from achieving your network goals, the City would consider new applications.

In accordance with the California Environmental Quality Act (CEQA), the denials are exempt from the California Environmental Quality Act (CEQA) per Public Resources Code Section 21080.b(5).

EFFECTIVE DATE FOR DECISIONS AND APPEALS PROCEDURE: The Director's decisions on each of the above referenced six (6) WCF nodes shall become final and effective fourteen (14) calendar days from the postmark date of the letter and notice card mailing (or on the next business day if it falls on a weekend or holiday), unless an appeal(s) is filed. Any appeal(s) shall be in writing and submitted to Planning and Development Services prior to the end of the business day of the fourteenth day. The Director's decisions

for those WCF nodes that are not appealed within this time shall become final, notwithstanding any timely appeal of one or more of the other nodes included in this letter.

In accordance with PAMC Section 18.42.110(g) and PAMC Section 18.42.110(h), any appeal(s) may be set for hearing before the City Council or may be placed on the City Council's consent calendar, pursuant to PAMC Section 18.77.070(f). The appeal form, which contains brief instructions, can be found on the City website (https://www.cityofpaloalto.org/civicax/filebank/documents/61907). Each appealed WCF node should be specifically listed by node number on the appeal form and in the letter stating the reason(s) for the appeal. In the event you assert that Federal law pre-empts any element of this decision, please provide all relevant evidence.

As outlined in the City's Fiscal Year 2020 Municipal Fee Schedule (https://www.cityofpaloalto.org/civicax/filebank/documents/73099), the cost to appeal one or more WCF nodes is the $595 appeal filing fee. In the event an appeal is filed, the applicant must provide an initial deposit of $3,811. As outlined in the Municipal Fee Schedule, this deposit and any additional funds are refunded if the City Council denies a third party appeal or upholds an applicant appeal.

Should you have any questions regarding the denials, please do not hesitate to contact Rebecca Atkinson, at (650) 329-2596, or e-mail Rebecca.Atkinson@CityofPaloAlto.org.

Sincerely,

Jonathan Lait, AICP, Director of Planning and Development Services

Cc:
Michael Miller, Crown Castle
Michael W. Shonafelt, Newmeyer & Dillion LLP
Sharon James, Government Relations Manager, Northern California
Rochelle Swanson, Project Manager, Western Region (Sure Site Address)
Molly Stump, City Attorney
Rebecca Atkinson, Planner

Attachment:
FINDINGS FOR DENIAL OF NODE 20, NODE 21M1, NODE 22M2, NODE 23, NODE 24, AND NODE 32 [17PLN-00450]

Attachment A:
FINDINGS FOR DENIAL OF NODE 20, NODE 21M1, NODE 22M2, NODE 23, NODE 24, AND NODE 32
[17PLN-00450]

Background

Prior to receipt of Crown Castle Cluster 3 (17PLN-00450), Crown Castle filed a Preliminary Architectural Review application that was discussed by the Architectural Review Board on September 21, 2017 (ID # 8309, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/61856). After their presentation on September 21, 2017, Crown Castle adjusted the proposed location of one WCF node and made a change to the design configuration to include a shroud design for the wood bayonet extension.

The City received applications for the six (6) Wireless Communication Facility (WCF) nodes in Crown Castle Cluster 3 (17PLN-00450) on December 13, 2017. While each WCF node requires its own Wireless Communication Facility permit, the proposed locations were grouped together into a Cluster for processing to allow coordinated City review and transparency to members of the public about what is proposed in their neighborhoods.

Prior to the January 17, 2019 Architectural Review Board meeting for Crown Castle Cluster 3 (17PLN-00450), Crown Castle indicated to staff that they wanted to hear feedback from the ARB, the public, and the City's subconsultants prior to adjusting their plans to respond to staff comments already presented during the review process regarding node locations and facility design configurations.

The Director identified items that remained outstanding for Crown Castle to address in the staff reports dated December 6, 2018 (ID # 9351, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/68006) and January 17, 2019 (ID # 9961, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/68420).

Staff regularly contacted Crown Castle subsequent to the January 17, 2019 Architectural Review Board meeting; planning staff sent follow up emails with no substantive response from Crown Castle, although Crown Castle suggested in some communications that project plans and other materials may be forthcoming, including in regard to design modifications, refined antenna placement, and perfecting the network.

The current tolling agreement, which was mutually agreed to and signed by representatives of Crown Castle and the City on September 16, 2019, requires decisions by the City on the WCF nodes in Crown Castle Cluster 3 (17PLN-00450) by November 18, 2019.

On September 17, 2019, staff received communication that Crown Castle was in a 'holding pattern' on how to proceed with the project.

The six WCF nodes in Crown Castle Cluster 3 were described as Tier 3 Wireless Communication Facilities under the Palo Alto Municipal Code in effect at the time of formal application receipt, with approval subject to PAMC section 18.42.110(h) (2017/2018). The City subsequently updated its wireless ordinance in April 2019 to comply with the FCC guidance and regulations effective January 2019. Under the current City ordinance, these six WCF nodes are classified as Tier 2, subject to approval in 18.42.110(g) (2019). For the applicant's convenience, findings for denial below are presented separately under both standards.

Standard for Approval or Denial
<u>2017 / 2018</u> Palo Alto Municipal Code (PAMC) Section 18.42.110(h)(2)-(3) [Tier 3]

(2) The Director or Council on appeal shall grant a Tier 3 WCF permit provided the proposed WCF complies with the Development Standards in Section 18.42.110(i), and the conditions of approval in Section 18.42.110(j), and all of the architectural review findings in Section 18.76.020(d) and the conditional use permit findings in Section 18.76.010(c) can be made.

(3) The Director, or Council on appeal, shall deny a Tier 3 WCF Permit if the findings above cannot be made.

A. Findings for Denial 2017/2018 Standard:

1. The Director finds that each of the six nodes fails to meet one or more of the applicable Development Standards in PAMC Section 18.42.110(i) (2017/2018), as detailed below.

2. The Director finds that each of the six nodes fails to meet all the architectural review findings in Section 18.76.020(d), as detailed below, and as discussed by the Architectural Review Board on January 17, 2019.[1]

3. The Director finds that each of the six nodes fails to meet all the conditional use permit findings in Section 18.76.010(c), as detailed below.

<u>Finding A-1 - WCF compliance with Development Standards, PAMC 18.42.110(i)</u>

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the Development Standards in **PAMC Section 18.42.110(i)(1) through (11)** is outlined below:

1. All six nodes fail to meet Development Standard 1, that each WCF *"shall utilize the smallest footprint possible."* The design of the WCF nodes in Crown Castle Cluster 3 does not utilize the smallest footprint possible. Specifically:
    - The proposed designs increase the footprint of the existing wood utility pole itself in a highly noticeable and visually intrusive manner because the conduit(s) running along the pole utilize multiple standoff brackets that increase the overall diameter of the WCF and create visible gaps between the conduit and the existing pole (see Project Plans, Sheets D-5, P-3, and P-4), rather than mounting the conduit(s) flush to the pole.
    - The radio equipment in the proposed design extends horizontally beyond the minimum necessary and employs a configuration that is not the smallest footprint. Project Plans Sheet D-4 calls for a separation of the RRU-32s to be six inches from the pole and is inconsistent with Sheets P-3 and P-4 that note a separation of three-inches. Utilizing the six-inch separation on Sheet D-4, the unshrouded RRU-32s extend over two-feet horizontally from the pole. Regardless of the aforementioned inconsistencies in the project plans, if the RRU-32s were mounted parallel instead of perpendicular to the pole, then the WCF could be more horizontally compact, would be arranged to form a slim profile by using vertical alignment of the equipment rather than the current proposal which shows the equipment 'sandwiching' the bracket, and would have a smaller footprint.

[1] Meeting minutes can be found online: https://www.cityofpaloalto.org/gov/boards/architectural/default.asp. The draft January 17, 2019 meeting minutes were approved as corrected on February 1, 2019.

- In the absence of a detailed analysis that investigated the feasibility of placing WCF node equipment in underground vaults at the proposed locations or elsewhere, the City cannot conclude that the footprint of the proposed side-mounted equipment is the smallest possible, or if it could be smaller through placement of the radio and other equipment in underground vaults.

2. All six nodes fail to meet Development Standard 2, that each WCF *"shall be designed to minimize the overall height, mass, and size of the cabinet and enclosure structure."* The design of the WCF nodes in Crown Castle Cluster 3 does not minimize the overall height, mass, and size of the cabinet and enclosure structure. Specifically:
   - The application materials did not contain information on how overall height of the proposed design could be minimized by utilizing smaller antennas, which is discussed in the CTC report.
   - The diameter of the wooden bayonet shroud shown on Project Plans Sheet D-6 for all nodes is generally proposed to be the diameter of the antenna, which is wider and creates more mass and size/volume than the tapered minimum necessary to shroud and conceal the wooden bayonet extension and conduit.
   - As stated in Section A-1 paragraph 1 above, the proposed design utilizes standoff brackets to create separation between the conduits and the pole and consequently does not minimize the overall mass and size/volume of an enclosure structure.
   - As stated in Section A-1 paragraph 1 above, the proposed design horizontally extends for more than what is necessary from the pole. Using the placement of the standoff brackets as an approximate from which to estimate the mass and size of a cabinet or enclosure structure, the overall mass and volume of a related enclosure would extend further from the pole than what would be necessary if the RRU-32s were mounted parallel to the pole. Furthermore, the top of the cabinet or enclosure structure would need to be higher than the top of the proposed RRU-32s mounting brackets in order to shroud and conceal the currently exposed cables/wires extending from the equipment into the conduit. This design would not minimize overall height, mass, and size of an enclosure structure.

3. All six nodes fail to meet Development Standard 3, that each WCF *"shall be screened from public view."* The design of the WCF nodes in Crown Castle Cluster 3 is not screened from public view. Specifically:
   - Although a shroud for the wooden bayonet extension is proposed, Project Plans Sheet D-6 used for all nodes clarifies that the shroud does not fully extend over the conduit and risers, nor does it extend downwards to the top of the existing pole; given the gaps noted on Sheet D-6, the proposed design does not screen all of the WCF node components proposed near the top of the existing pole.
   - The proposed design does not screen the radio and other equipment, cabling, and mounting brackets, either by use of metal shrouds that are painted to match the existing wood utility poles or through other means; the side mounted radio and other equipment, cabling, and mounting brackets are entirely unscreened on each pole.
   - The proposed design has conduit(s) running along the pole that utilize multiple standoff brackets to increase the overall diameter of the WCF and to create visible gaps between the conduit and the existing pole (see Project Plans Sheets D-5, P-3, and P-4 for all nodes), rather than mounting the conduit(s) flush to the pole. The mounting brackets for the conduit near the top of the pole are not shown in the visual simulations, but they are noted on the elevations in the project plans.
   - Furthermore, amenity trees are not proposed at four (4) WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the node and ensure appropriate screening. Additionally, the selected pole for Node 32 is highly visible and there isn't a readily available opportunity to plant an amenity tree to help interrupt direct views of the proposed WCF.

- Additionally, the proposed orientation of the equipment at some nodes increases their visibility within the public right of way:
    i. Instead of proposing an installation that is parallel to the travel way, Node 21m1 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a comparatively wider and more highly visible deployment when viewed from the right of way.
    ii. Instead of proposing an installation that faces away from an intersection, Node 23 is proposed to face toward an intersection without any screening.
    iii. Instead of proposing an installation that is parallel to the travel way, Node 32 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a comparatively wider and more highly visible deployment when viewed from the right of way.

4. All six nodes fail to meet Development Standard 4, that each WCF *"shall be architecturally compatible with the existing site."* The design of the WCF nodes in Crown Castle Cluster 3 is not architecturally compatible with the existing site; on January 17, 2019, the Architectural Review Board considered the architectural compatibility and aesthetics of the pole-mounted equipment as a significant basis for their recommendation to deny the six (6) WCF nodes in Crown Castle Cluster 3, specifically citing that the proposed design was not unified and coherent in a manner that enhances living conditions on the site and in adjacent residential areas.

5. All six nodes fail to meet Development Standard 6, that *"an antenna, base station, or tower shall be designed to minimize its visibility from off-site locations and shall be of a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the antenna, base station, or tower into the surrounding area."* The design of the WCF nodes in Crown Castle Cluster 3 does not minimize its visibility from off-site locations and does not use a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the antenna, base station, or tower into the surrounding area. For instance:
    - Although a shroud for the wooden bayonet extension is proposed, Project Plans Sheet D-6 for all nodes clarifies that the shroud does not fully extend over the conduit and risers, nor does it extend downwards to the top of the existing pole; given the gaps noted on Sheet D-6, the proposed design does not screen all of the WCF node components proposed near the top of the existing pole.
    - The proposed design does not screen the radio and other equipment, cabling, and mounting brackets, either by use of metal shrouds that are painted to match the existing wood utility poles or through other means; the side mounted radio and other equipment, cabling, and mounting brackets are entirely unscreened on each pole.
    - The proposed design has conduit(s) running along the pole that utilize multiple standoff brackets to increase the overall diameter of the WCF and to create visible gaps between the conduit and the existing pole (see Project Plans Sheets D-5, P-3, and P-4 for all nodes), rather than mounting the conduit(s) flush to the pole. Note that the mounting brackets for the conduit near the top of the pole are not shown in the visual simulations, but they are noted on the elevations in the project plans.
    - Furthermore, amenity trees are not proposed at four (4) WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the node and ensure appropriate screening. Additionally, the selected pole for Node 32 is highly visible and there isn't a readily available opportunity to plant an amenity tree to help interrupt direct views of the proposed WCF.
    - Additionally, the proposed orientation of the equipment at some nodes increases their visibility within the public right of way:
        i. Instead of proposing an installation that is parallel to the travel way, Node 21m1 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a

comparatively wider and more highly visible deployment when viewed from the right of way.

ii. Instead of proposing an installation that faces away from an intersection, Node 23 is proposed to face toward an intersection without any screening.

iii. Instead of proposing an installation that is parallel to the travel way, Node 32 is proposed to face toward private property and over the adjacent sidewalk in a manner resulting in a comparatively wider and more highly visible deployment when viewed from the right of way.

Finding A-2 – WCF compliance with Architectural Review Findings, PAMC Section 18.76.020(d)

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the architectural review findings in **PAMC Section 18.76.020(d)** is outlined below.

1. All six nodes fail to meet architectural review finding 1, that *"The design is consistent with applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides."* As outlined in Section A-1 above, the design of the WCF nodes in Crown Castle Cluster 3 does not comply with one or more of the development standards in PAMC 18.42.110(i). As outlined in Section A-3 below, there several goals and policies in the City's Comprehensive Plan that are not met by the design of the WCF nodes in Crown Castle Cluster 3. Therefore, the design of the WCF nodes in Crown Castle Cluster 3 does not comply with all applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides.

2. All six nodes fail to meet the following elements of architectural review finding 2, that *"The project has a unified and coherent design, that:"*

A. Creates an internal sense of order and desirable environment for occupants, visitors, and the general community. The design of the WCF nodes in Crown Castle Cluster 3 does not shroud, conceal, or camouflage the proposed radio and other equipment, cabling, and mounting brackets. The design hangs in a discordant manner to the pole leaving gaps between the components and visual exposure of the many different pieces and sizes of equipment. The design does not use the smallest footprint possible as required by code. Consequently, the design negatively affects the desirability of the environment for occupants, visitors, and the general community.

D. Provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations. The design of the WCF nodes in Crown Castle Cluster 3 does not meet this finding, as the WCF nodes are not designed to blend in with the existing character of or adjacent land uses, have more mass than necessary, and are visually intrusive due to the lack of screening, concealment, and camouflage.

E. Enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas. On January 17, 2019, the Architectural Review Board considered the architectural compatibility and aesthetics of the pole-mounted equipment as a significant basis for their recommendation to deny the six (6) WCF nodes in Crown Castle Cluster 3, specifically citing that the proposed design was not unified and coherent in a manner that enhances living conditions on the site and in adjacent residential areas. The design of the WCF nodes in Crown Castle Cluster 3 does not shroud, conceal, or camouflage the proposed radio and other equipment, cabling, and mounting brackets, and the conduit is not mounted flush to the pole. Instead, the design appears to hang in a discordant manner to the pole leaving gaps between the components and visually exposing the many different pieces and sizes of equipment. The proposed project does not include residential uses itself. However, the design of the WCF nodes in Crown Castle Cluster 3 does not enhance the living conditions in

adjacent residential areas, as the design does not comply with one or more of the City's development standards (as outlined in Section A-1 above) and several Comprehensive Plan goals and policies (as outlined in Section A-3 below).

3. All six nodes fail to meet architectural review finding 3, that *"The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding."* The design of the WCF nodes in Crown Castle Cluster 3 does not meet this finding, as the design does not shroud, conceal, or camouflage the proposed radio and other equipment, cabling, and mounting brackets and the conduit is not mounted flush to the pole. Instead, the design appears to hang in a discordant manner to the pole leaving gaps between the components and visual exposure of the many different pieces and sizes of equipment.

4. All six nodes fail to meet the architectural review finding 4, that *"The design is functional, allowing for ease and safety of pedestrian and bicycle traffic and providing for elements that support the building's necessary operations (e.g. convenient vehicle access to property and utilities, appropriate arrangement and amount of open space and integrated signage, if applicable, etc.)."* The design of the WCF nodes in Crown Castle Cluster 3 fails to demonstrate that each node would have adequate horizontal clearance while not facing private property or extending over adjacent sidewalks, affecting the ease and safety of pedestrian and bicycle traffic. Furthermore, the proposed design is not shown to provide adequate vertical clearance over sidewalks, which is a required 10 feet in the City's standard conditions of approval, and affects the ease and safety of pedestrian and bicycle traffic.

5. Four of the six nodes fail to meet architectural review finding 5, that *"The landscape design complements and enhances the building design and its surroundings, is appropriate to the site's functions, and utilizes to the extent practical, regional indigenous drought resistant plant material capable of providing desirable habitat that can be appropriately maintained."* Node 20, Node 21m1, Node 22m2, and Node 23 do not meet this finding, as those WCF nodes do not include the use of amenity trees to provide screening where it would be possible.

Finding A-3 – WCF compliance with Conditional Use Permit Findings, PAMC Section 18.76.010(c)

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the conditional use permit findings in **PAMC Section 18.76.010(c)** is outlined below:

1. All six nodes fail to meet conditional use permit finding 1, that *"The project will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience."* The Crown Castle Cluster 3 application materials do not clearly demonstrate that development standards-compliant WCF node designs would be mounted and installed in a manner that complies with the following safety regulations, specifically:
    - adherence to Federal Communications Commission standards, including those in FCC Bulletin OET 65,
    - adherence to California Public Utilities Commission (CPUC) General Order (GO) 95 requirements, with regard to equipment mounting orientation not precluding access to the required climbing space on the pole, providing vertical separation of antennas from electric lines, ensuring the post-installation structural integrity of the pole, and providing compliant attachment and mounting details and materials,
    - providing at least minimum horizontal and/or vertical clearance from intersections, curblines, and the travel way for pedestrians, bicycles, and vehicles (which is important for the operation of bicycle lanes, red curb zones, on-street parking spaces for standard height vehicles as well as oversized delivery

vehicles, etc.).

- providing at least minimum sight line clearance at intersection street corners, including at least a minimum of three foot horizontal clearance from corners to ensure visibility and safety.
- prevention of obstructions to pedestrian and bicycle flow in general and especially on narrow sidewalks any busy sidewalks.

Furthermore, there is less than the required 1.5 feet of horizontal clearance between the existing pole and the adjacent curbline at the following five (5) node locations, resulting in the inability to provide the horizontal clearance while also not facing private property or extending over existing sidewalks:

- Node 20, CPAU Pole #6474 (adjacent to 205 Everett Avenue and also near 251 Emerson Street)
- Node 21m1, CPAU Pole #6362 (adjacent to 301 Bryant Street and also near 311 Everett Avenue)
- Node 23, CPAU Pole #6350 (adjacent to 482 Everett Avenue)
- Node 24, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue)
- Node 32, CPAU Pole #6492 (adjacent to 201 High Street).

2. All six nodes fail to meet conditional use permit finding 2, that *"The project is located and conducted in a manner in accord with the Palo Alto Comprehensive Plan and the purposes of this title (Zoning)."* The City's Municipal Code provides a process to permit WCF's that blend with their existing surroundings and do not negatively impact the environment, historic properties, or public safety. As outlined in Section A-1 above, the design of the WCF nodes in Crown Castle Cluster 3 does not comply with one or more of the development standards in PAMC 18.42.110(i). As outlined here, there several goals and policies in the City's Comprehensive Plan that are not met by the design of the WCF nodes in Crown Castle Cluster 3:
    - The design of the WCF nodes in Crown Castle Cluster 3 prevents the finding of consistency with Comprehensive Plan GOAL L-4/POLICY L-4.7/POLICY L-4.8, which emphasize maintaining and enhancing the downtown area by promoting quality design that recognizes the regional and historic importance of the area, reinforces its pedestrian character, and that creates an environment that is inviting to pedestrians and bicyclists. The proposed design fails to minimize its footprint, is not screened from public view, has more mass than necessary, and has other aesthetic challenges as outlined in Section A-1 above, and does not provide adequate horizontal and vertical clearances for pedestrians, bicyclists, and vehicles as outlined above in Section A-3 paragraph 1.
    - The design of the WCF nodes in Crown Castle Cluster 3 prevents the finding of consistency with Comprehensive Plan GOAL L-9/POLICY L-9.3/POLICY L-9.4/POLICY L-9.5/POLICY L-9.10/PROGRAM L9.10.2, which emphasize creating attractive, inviting public spaces and streets that enhance the image and character of the City, treating residential streets a public ways and neighborhood amenities, promoting walking and "active transportation," and preserving and enhancing publicly accessible, shared outdoor gathering spaces within walking and biking distance of residential neighborhoods, designing utility structures to meet high-quality design standards and embrace technological advances, and encourage the use of compact and well-designed utility elements such as telecommunications infrastructure and place these elements in locations that will minimize their visual intrusion. As discussed by the Architectural Review Board and as outlined in Section A-1 above, the design is visually intrusive and is not compact, does not utilize the smallest footprint possible or minimize mass, and is not unified and coherent in a manner that enhances living conditions on the site and in adjacent residential areas.
    - The design of the WCF nodes in Crown Castle Cluster 3 prevents the finding of consistency with Comprehensive Plan GOAL T-6 that emphasizes providing a safe environment for motorists, pedestrians, and bicyclists because the design does not provide adequate

horizontal and vertical clearances for pedestrians, bicyclists, and vehicles as outlined above in Section A-3 paragraph 1.

In staff reports dated December 6, 2018 (ID # 9351, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/68006) and January 17, 2019 (ID # 9961, available at: https://www.cityofpaloalto.org/civicax/filebank/documents/68420), the Director identified many design concepts under the Palo Alto Comprehensive Plan and PAMC Section 18.42.110 and other codes that remained outstanding for Crown Castle to address with a response in order to meet the findings in effect for 2017/2018, including:

- Discussion of vaulting of equipment,
- Ensuring that no sky shall be seen through the mounting and attachment equipment for the antennas and the conduits,
- Reducing the standoff distance for pole mounted equipment,
- Utilization of shrouding for pole mounted equipment,
- Reducing the volume of pole mounted equipment,
- Maintaining required climbing space while also not having pole mounted equipment face directly toward adjacent private property or extend over sidewalks,
- Maintaining minimum horizontal and vertical clearances:
  - At least 1.5-feet horizontal clearance between any new or relocated equipment and the adjacent face of curb or edge of traveled way for any public roadway, driveway, or alley, unless 16-feet vertical clearance is provided between equipment and the top of adjacent travel way,
  - At least 3-feet of horizontal clearance from driveways or corners, and
  - At least 10-feet vertical clearance between the adjacent sidewalk, path, or walkway grade.
- Clarifying cohesiveness and integration of the design in regard to:
  - the shape, design, color, and materiality of the antenna shroud, as well as how far it extends from the base of the antenna to the top of the existing pole,
  - the cables in the conduit into the bottom of the antenna shroud, and
  - any separation of the conduit from the top and mid-section of the pole, given that the pole has some tapering.
- Any pole-mounted equipment must:
  - not face the street or adjacent properties,
  - not extend over the sidewalk,
  - be positioned to ensure the equipment meets minimum horizontal and vertical clearances relative to driveways, corners, and curblines,
  - be screened by a painted metal shroud,
  - be arranged to form a slim profile - using vertical alignment of the equipment rather than the current proposal which shows the equipment 'sandwiching' the bracket.

In order to meet the findings in effect in 2017/2018, staff also identified opportunities to plant new or replacement amenity trees at four WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the node, contribute to a more cohesive site specific design, and help maintain neighborhood character. Staff further identified that the side-mounted equipment proposed for Node 23 and Node 24 is near and/or face existing short transfer poles and that the transfer poles adjacent to Node 23 and Node 24 should be removed.

The staff reports also incorporate and discuss the City's subconsultant report, prepared by CTC and dated

December 2018. Staff disseminated the CTC report to Crown Castle in hardcopy form on December 6, 2018, electronic form on December 13, 2018, and as an attachment to the January 17, 2019 staff report. The Architectural Review Board discussed the staff reports and the CTC report on January 17, 2019. CTC's analysis noted that it may be possible to reduce visual impacts by reducing the size of the components (antennas and related equipment), by camouflaging the equipment cabinets in some way, by placing equipment in underground vaults, and/or by considering a microcell architecture as a viable alternative.

Based on the foregoing and information contained in the administrative record, each of the WCF nodes cannot be found as consistent with the City's Comprehensive Plan and the purposes of zoning.

Standard for Approval or Denial
2019 Palo Alto Municipal Code Section 18.42.110(g)(2)-(3) [Tier 2]

(2) The Director, or Council on appeal, shall grant a Tier 2 WCF Permit provided the proposed WCF complies with the conditions of approval in Section 18.42.110(j) and all objective standards adopted and amended from time to time by resolution of the City Council or the development standards in Section 18.42.110(i). If such objective standards are repealed, an application shall not be granted unless, in addition to the other requirements of this section, all of the architectural review findings in Section 18.76.020(d) can be made.

(3) The Director, or Council on appeal, shall deny a Tier 2 WCF Permit if the above findings cannot be made.

B. Findings for Denial (2019) Standard:

1. The Director finds that each of the six nodes fails to meet one or more of the objective standards adopted by resolution of the City Council, as detailed below; or

2. In the alternative, the Director finds that each of the six nodes fails to meet one or more of the generally applicable development standards in PAMC Section 18.42.110(i), as detailed below:

Finding B-1 - WCF compliance with Objective Aesthetic, Noise, and Related Standards for Wireless Communication Facilities in the Public Rights of Way ("Wireless Administrative Standards")

1. The proposed design for the six (6) WCF nodes proposed in Crown Castle Cluster 3 (17PLN-00450) does not comply with one or more of the City's current Wireless Administrative Standards. Specifically, the proposed design:
   - does not match any of the four standard designs approved by the City: a) Underground design, b) Top-mounted design, c) Minimal sunshield design, or d) Existing signage.
   - does not include a single integrated shroud and "antenna skirt" that meets the pole without any gaps.
   - does not show conduit as mounted flush to the pole.
   - does not show all shrouds and equipment designed without gaps between materials or sky visible between component surfaces.

   Furthermore, the Project Plans show:
   - A total height that exceeds 55 feet for three (3) WCF nodes (Node 21m1, Node 22m2, and Node 23).
   - The absence of amenity trees at four (4) WCF nodes (Node 20, Node 21m1, Node 22m2, and Node 23) to help interrupt direct views of the WCF equipment. Additionally, the selected pole for Node 32

is highly visible and there isn't a readily available opportunity to plant an amenity tree to help interrupt direct views of the proposed WCF.

- That there is less than the required 1.5 feet of horizontal clearance between the existing pole and the adjacent curbline at the following five (5) node locations, resulting in the inability to provide the horizontal clearance while also not facing private property or extending over existing sidewalks:
  - Node 20, CPAU Pole #6474 (adjacent to 205 Everett Avenue and also near 251 Emerson Street)
  - Node 21m1, CPAU Pole #6362 (adjacent to 301 Bryant Street and also near 311 Everett Avenue)
  - Node 23, CPAU Pole #6350 (adjacent to 482 Everett Avenue)
  - Node 24, CPAU Pole #6378 (adjacent to 243 Hawthorne Avenue)
  - Node 32, CPAU Pole #6492 (adjacent to 201 High Street).

Based on the foregoing and information contained in the administrative record, each of the WCF nodes cannot be found as consistent with the City's Wireless Administrative Standards.

Finding B-2 - WCF compliance with Generally Applicable Development Standards, PAMC 18.42.110(i)

The basis for finding that each of the six (6) WCF nodes in Crown Castle Cluster 3 (17PLN-00450) fails to comply with one or more of the Development Standards in **PAMC 18.42.110(i)** is outlined below:

1. All six nodes fail to meet Development Standard 1, that each WCF *"shall utilize the smallest antennae, radio, and associated equipment, as measured by volume, technically feasible to achieve a network objective,"* as outlined above in Section A-1 under paragraphs 1 and 2.

2. All six nodes fail to meet Development Standard 2, that each WCF *"shall be screened from public view,"* as outlined above in Section A-1 under paragraph 3.

3. All six nodes fail to meet Development Standard 3, that each WCF *"when attached to an existing structure, shall be shrouded or screened using materials or colors found on existing structure."* The design of the WCF nodes in Crown Castle Cluster 3 proposes to paint some or all of the mounted equipment Sherwin Williams Well-Bread brown, which is a paint color that is similar to the color of a new or fairly new wood utility pole. However, it is not clear from the application materials if the exposed cables/wires would also be painted this color, and, regardless, the design is not shrouded.

4. All six nodes fail to meet Development Standard 5, that for each WCF, *"an antenna, base station, or tower shall be of a "camouflaged" or "stealth" design, including concealment, screening, and other techniques to hide or blend the antenna, base station, or tower into the surrounding area, such as the use of a monopine design,"* as outlined above in Section A-1 under paragraph 5.

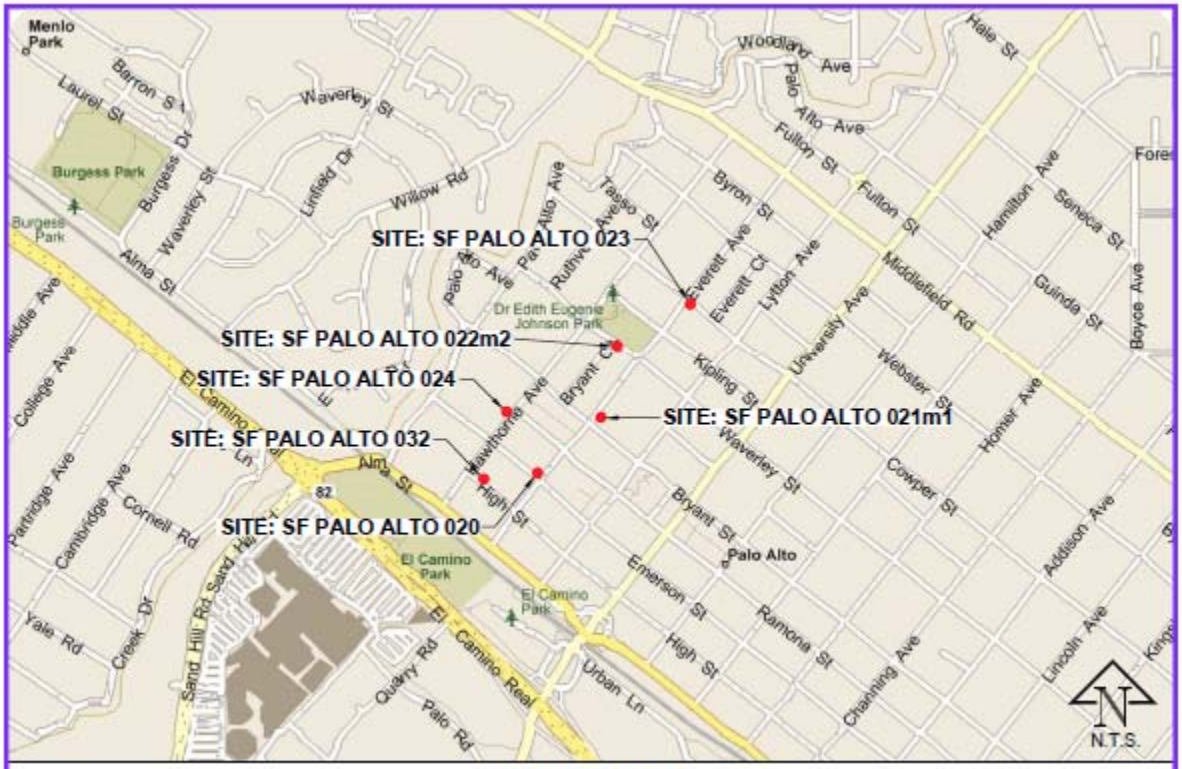
ARB Submittal for Major Project
PROJECT DESCRIPTION 17PLN-00450

RE: Crown Castle – Cluster 3 of 3 for 16 Small Cell Node Expansion Project in Downtown Palo Alto.
Cluster 3: Six small cell nodes on wood utility poles within the Downtown North Neighborhood.

Introduction

Crown Castle (formerly NextG Networks) is seeking approval of a Crown Castle node expansion project in the core area of Palo Alto. This project will utilize the similar designs as approved in the previous project in 2015 (15PLN-00140). As with the 2015 small cell project, the 2017 expansion project proposes sixteen (16) nodes overall to provide capacity coverage to the macro cell at 525 University Avenue. This application seeks approval for six (6) nodes within the Downtown North Neighborhood. Crown Castle has a Master License Agreement with the City of Palo Alto that allows for use of city-controlled space on utility poles and streetlight poles and in conduits owned by CPAU. This Crown Castle project small cell project is designed to be installed in the public right of way on existing utility poles, including wood poles and streetlights. The small cell wireless sites provide capacity coverage to the larger cell site or cell tower in the area. Verizon Wireless is the carrier is the identified tenant in these Crown Castle expansion nodes.

As stated above, this application requests approval for Cluster 3 consisting of six (6) nodes of the 16 nodes in proposed expansion project. To summarize the overall expansion 16 node project, Verizon Wireless and Crown Castle Radio Frequency (RF) engineers have identified locations throughout the city that require service. Sixteen (16) installations are currently planned to be co-located on wood utility poles and metal streetlights. Six (6) of these small cells are proposed to be co-located on new and existing city street light poles, one (1) new streetlight, and the remaining nine (9) small cells are proposed to be installed on existing wood utility poles. These small cells will provide the City of Palo Alto much needed improvements in network capacity and coverage. Small cells are currently proposed in three (3) configurations that are dependent on the design opportunities and constraints of specific pole locations within the City of Palo Alto. The six (6) nodes in this application are distributed within the Downtown North Neighborhood. Please see Vicinity Map.



VICINITY MAP

Coverage Needs

The unprecedented current and future demand for wireless service requires the densification of existing cellular networks. More people are using a wireless connection for personal and professional needs, both in home and in transit. As a result, wireless communication facilities are diminishing in height and being located closer to the user to meet both daily needs as well as provide essential coverage for emergency personnel. The coverage map below demonstrates the current need. Blue indicates poor coverage and green indicates good coverage. Diagram 1 shows the area identified for the six (6) nodes is limited green and yellow. On the following page, Diagram 2 shows the improvement in capacity where green is consistent.

Diagram 1 - Current level of capacity for 700 MHz:

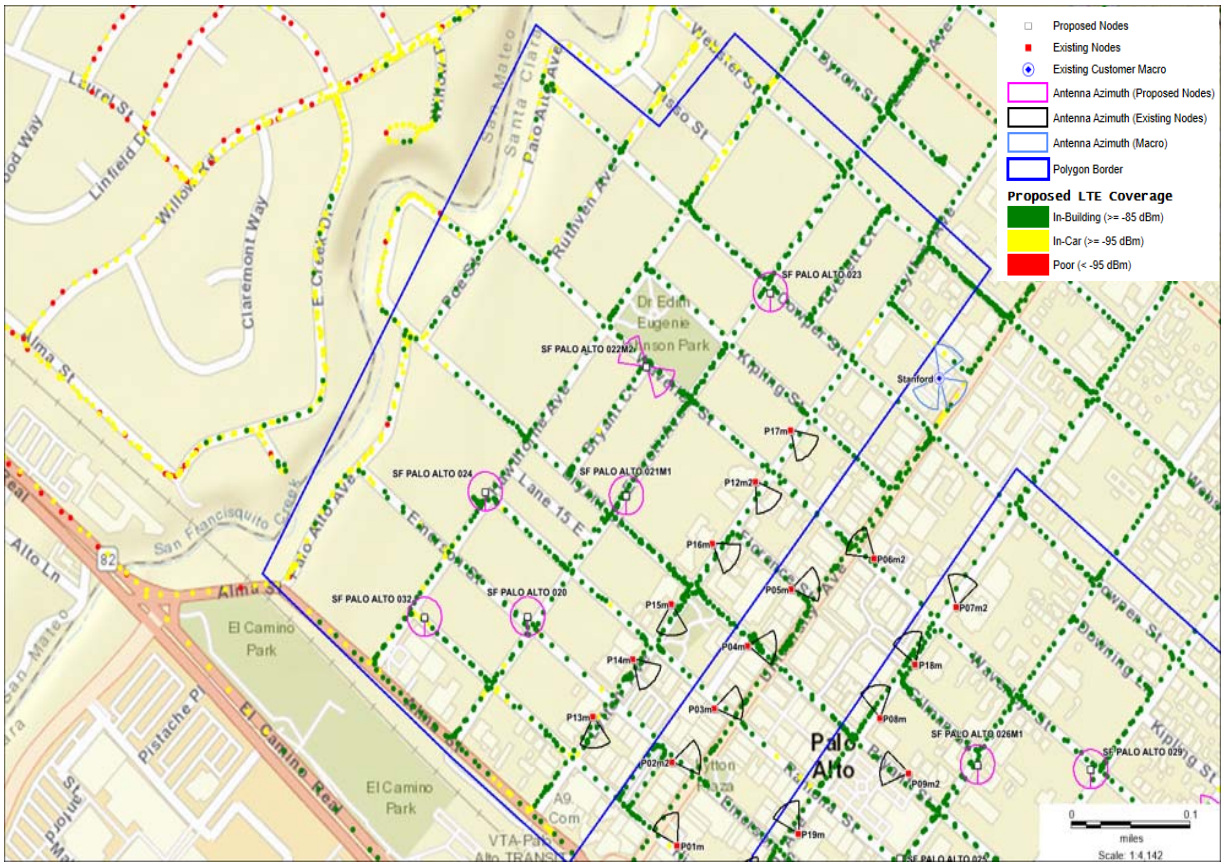


Diagram 2 - Proposed Improvement in capacity for 700 MHz:

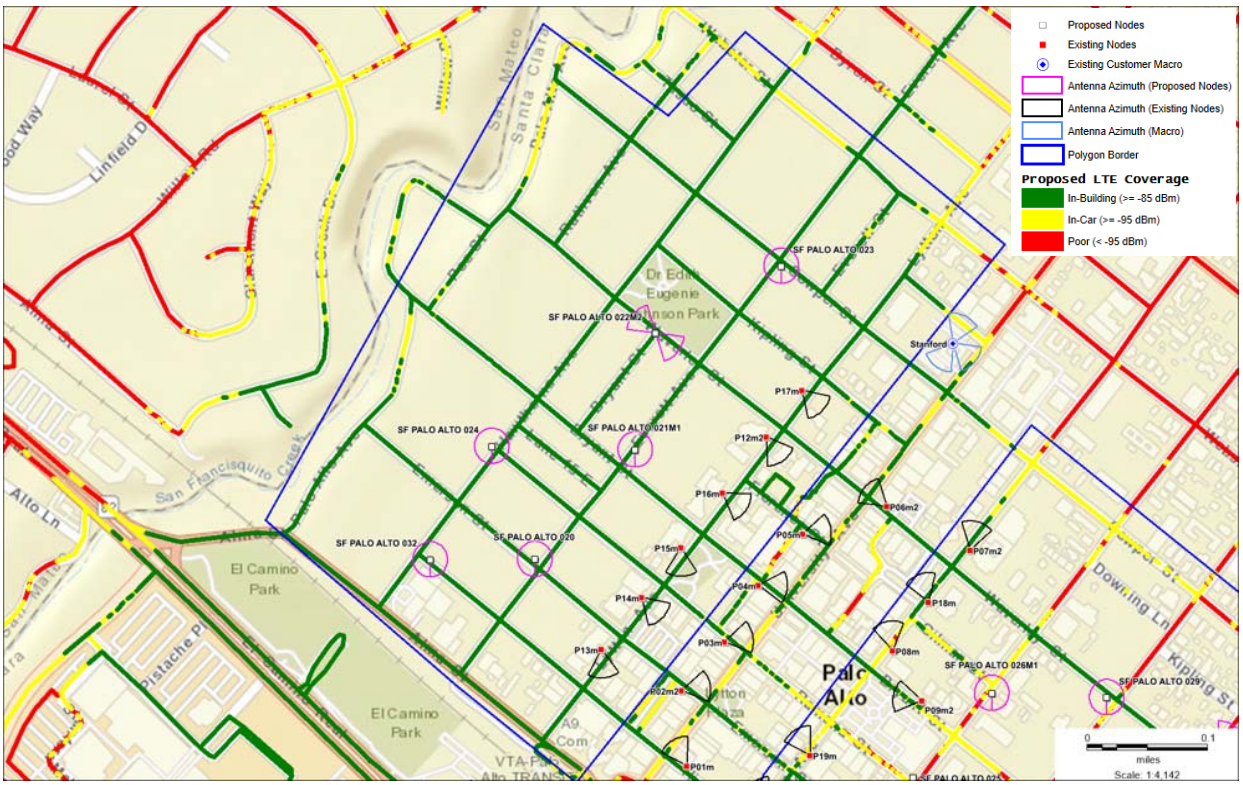


Diagram 3 - Current level of coverage for 1900 MHz:

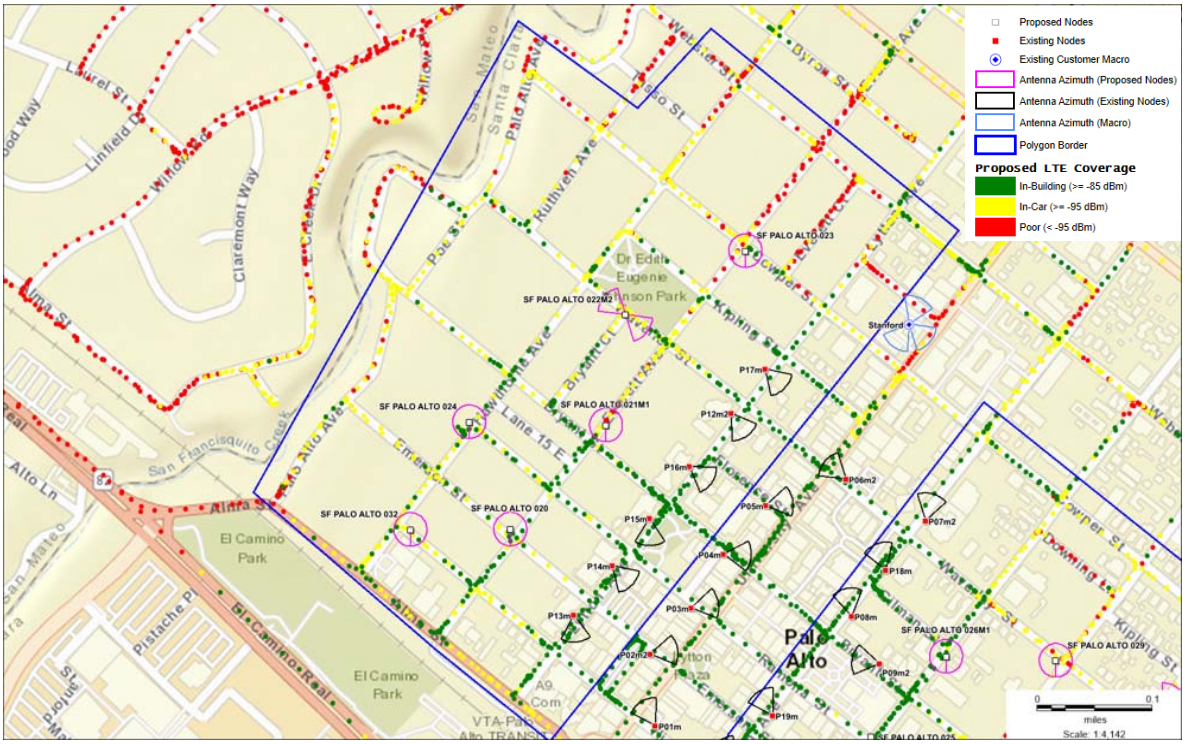


Diagram 4 - Proposed Improvement in coverage for 1900 MHz:

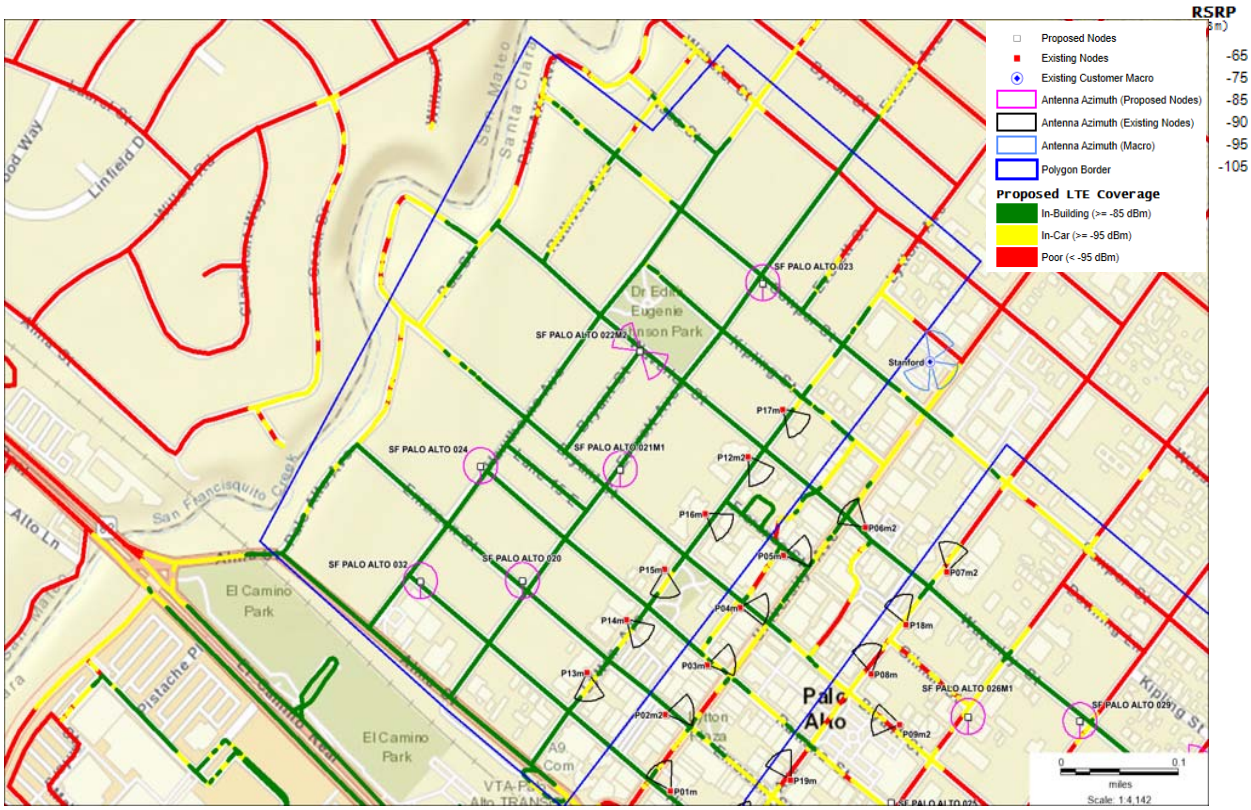


Diagram 5 – Current level of coverage for 2100 MHz:

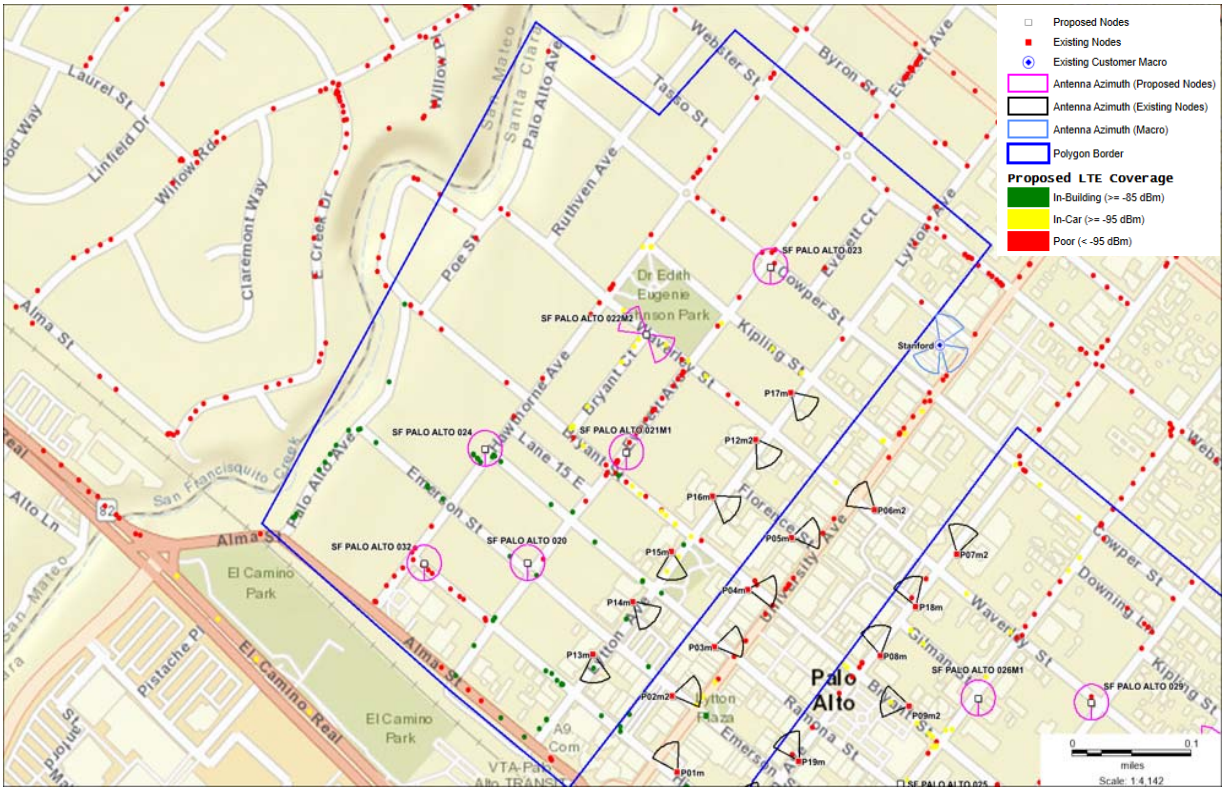
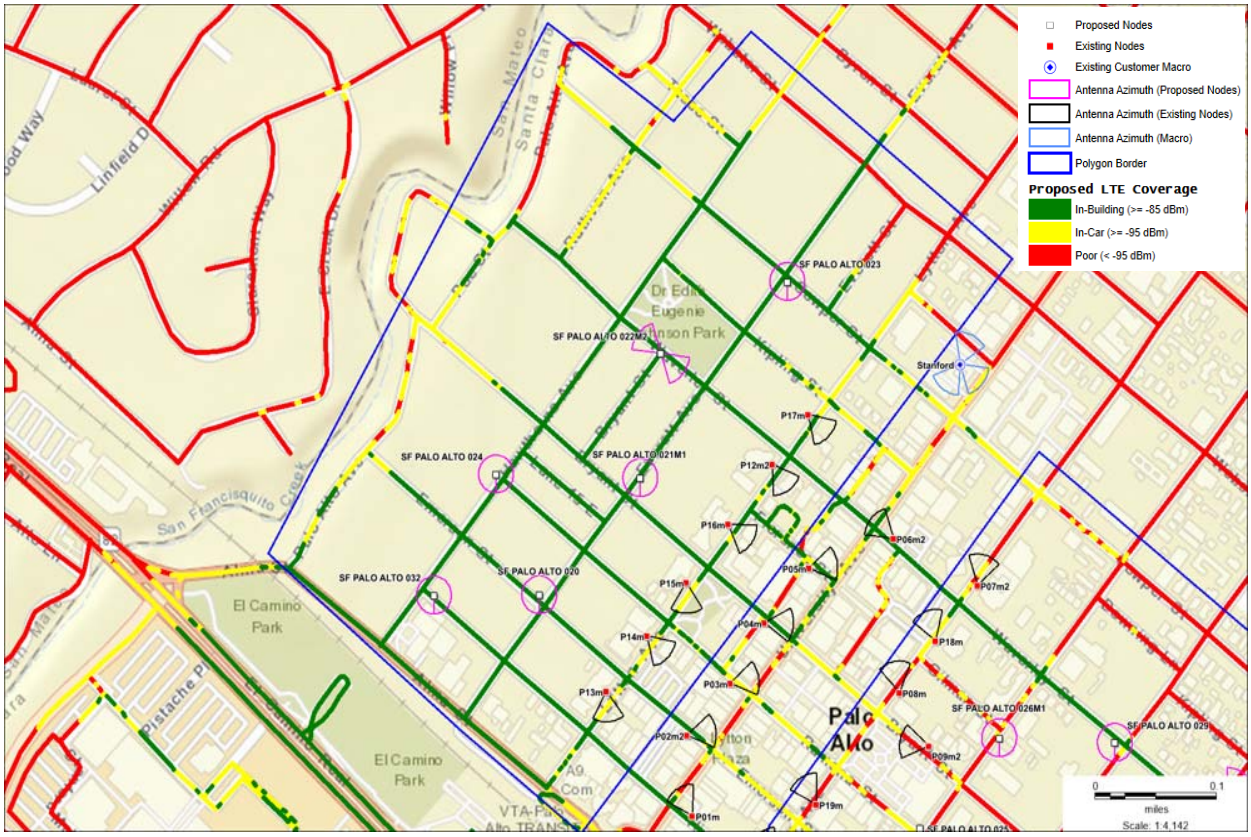


Diagram 6 – Proposed improvement in coverage for 2100 MHz:



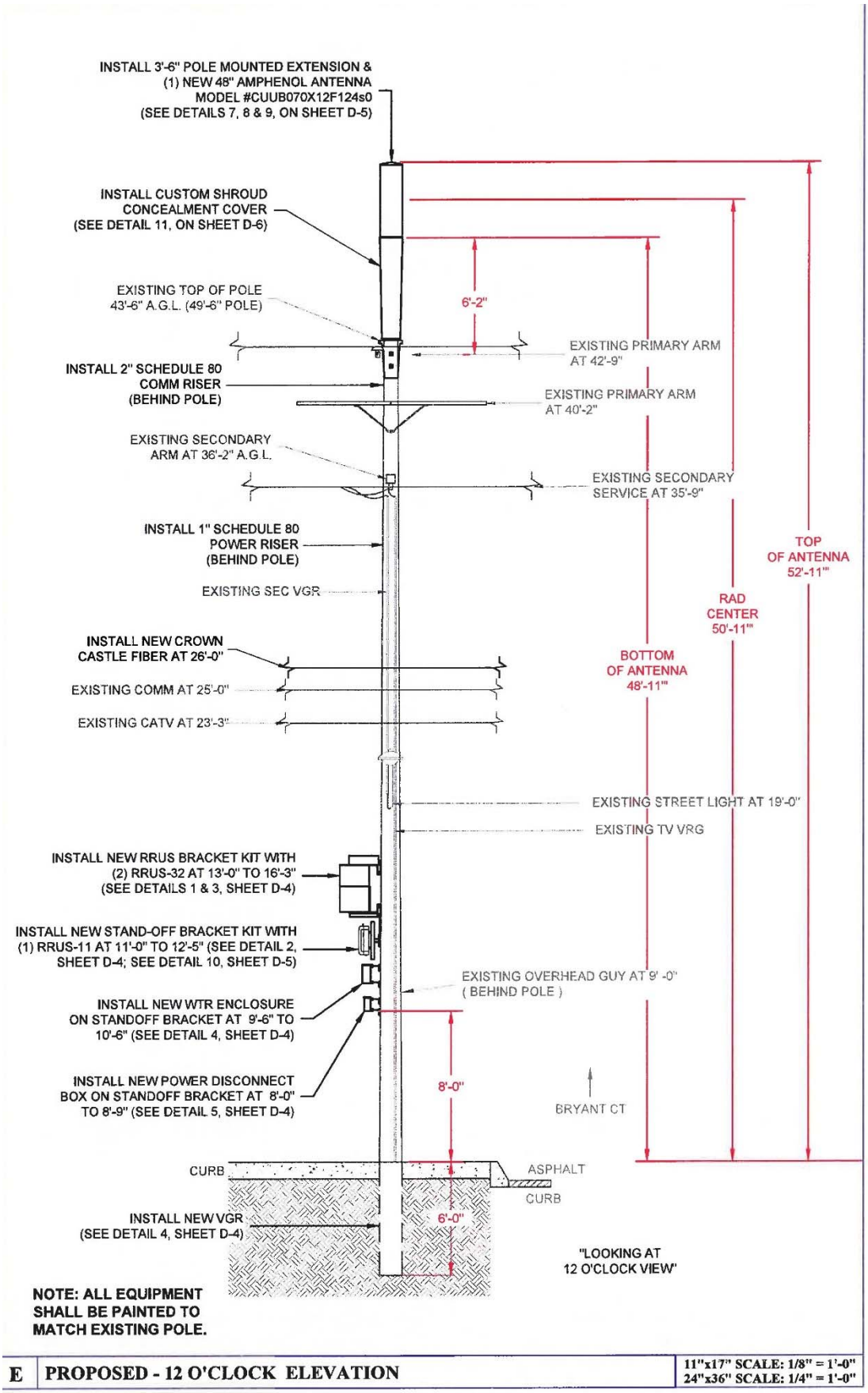
Site Locations

The process for site selection by Crown Castle aim to meet the need for service coverage, while at the same time locating poles that will have the least impact. With high demand of wireless services, the small facilities need to be located within a relatively narrow area as compared to a 'macro' or traditional larger wireless facility. The sites were initially chosen based upon the greatest needs in coverage in the area identified. Each site was walked by a team that included RF (radio frequency) engineers, a construction manager, A&E (architectural and engineering) professionals and government relations consultants in order to make on the spot decisions of the best pole in the neighborhood that could accommodate the wireless equipment within the City's criteria and with sensitivity to the neighborhood. Pole location proximity to a residence and sidewalk, orientation of the placement of the equipment on the pole and general visibility were taken into account as to which pole in any given area was finally chosen. There are typically only one or two poles that are viable candidates due to the small size design of the sites and limited range of the signal. Pole selection in determined in the field ensuring the RF need for the facility and constructability are met while meeting zoning and other requirements by the City, including sensitivity to the community needs. The team also walked the sites with staff from Compliance to confirm which locations were feasible. The pole top design with antenna and extension was determined by staff on joint site walk to be the only allowable space on the specific six (6) nodes in this proposal, as opposed to locating lower on the pole. It is a clean design that accommodates the needs of the utility operations while providing space for the needed small cell equipment.

During the application resubmittal process, a new location has been identified for Node 22 (Node 22m2). The new location is at the corner of Bryant Ct and Waverley Street, adjacent to 258 Waverley St. During the process between the original submittal and the Preliminary ARB hearing on September 21, 2017, an alternative location to the original Node 22 (22m1) was included in the original Formal ARB application. The original node was proposed to be collocated on the wood utility pole adjacent to 386 Everett Avenue. The alternative proposed location to the ARB was directly across the street adjacent to 311 Waverley (also identified as 404 Everett). Upon further review, the RF engineer was able to determine that coverage and capacity needs of the network could be accommodated on the alternative pole now identified as Node 22m2, thereby further mitigating visual impacts and concerns of proximity to the units on higher floors.

Site information on each node:

Node	Closest address for identity purposes	Assessor's address based on location in plans	Adjacent APN	Pole #	Adjacent Zone	Overlay Zone
20	251 Emerson St (near 205 Everett St)	205 Everett St	12025024	6474	RM-30	MF
21	301 Bryant (across from 311 Everett Ave)	301 Bryant St	12014045	6362	RMD (NP)	MF
22m2	258 Waverley (corner of Waverley & Bryant Ct)	258 Waverley St	12013005	6288	RM-30	MF
23	482 Everett Ave (across from 305 Cowper St)	482 Everett Ave	12014057	6350	RMD (NP)	MF
24	243 Hawthorne Ave	221 Hawthorne Ave	12024002	6378	RM-30	MF
32	201 High St	201 High St	12025049	6492	RM-15	MF



Elevation of example of the installation. Please see site plans for specific elevation of each Node and accompanying radio equipment.

Minimizing Visual Impacts

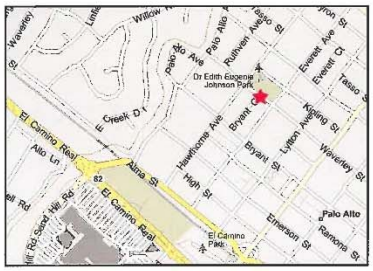
To minimize the visual impact, the antenna and extension bracket will be enclosed within a shroud at the top of the wood utility pole. Where feasible, wood utility poles near trees were chosen to further mitigate visual impacts. The radio equipment will be attached to the side of the wood utility pole in a manner that keeps the distance between the radios and the wooden pole as close as possible. All equipment and shrouds will be painted to match in order to blend with the wood pole. Colors identified at this time are Sherwin Williams Fairfax Brown and Well-Bred Brown. Final colors choice subject to direction by staff.

Example of shroud and equipment on Node 22m2. See site plans for specifics on each node.

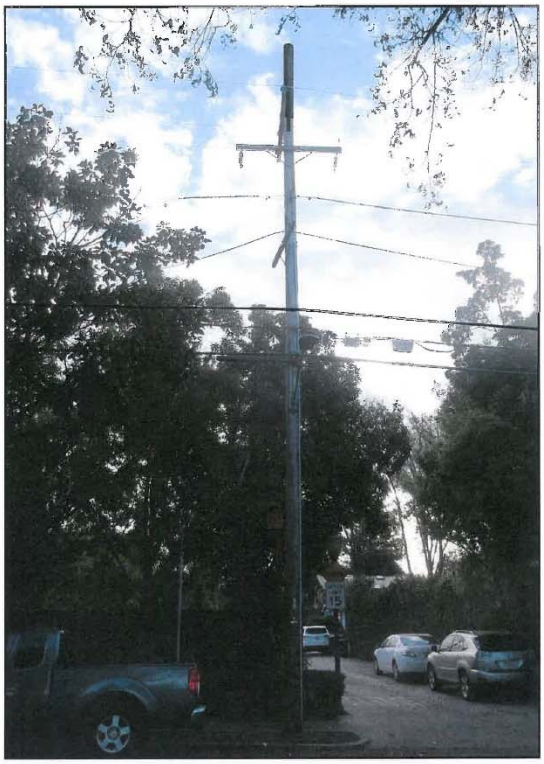
CROWN CASTLE

Existing Site

SF PALO ALTO 022m2
ROW ADJACENT TO
258 WAVERLEY ST AT
CORNER OF BRYANT CT



Vicinity Map



Proposed Site

Scope of Work

The scope of work includes the installation includes adding a 48” antenna and extension mount enclosed within a shroud on the top of six existing wood utility poles with additional radio equipment to be mounted on the side of the pole. Any disturbance to landscaping or the asphalt in the street to accommodate the work will also be completely repaired and restored. Project information can be found at http://www.crowncastle.com/projects/palo-alto_ca.aspx

Respectfully submitted,

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