



Planning Commission Staff Report
Item # 1, February 2, 2023
General Plan Text Amendment No. PA-2200212
Prepared by: Megan Aguirre

PROJECT SUMMARY

Applicant Information

Project Applicant: San Joaquin County Community Development Department

Project Site Information

Project Location: Countywide

Environmental Review Information

CEQA Determination: Notice of Exemption (Attachment B; Environmental Document)

Project Description

This project is a General Plan Text Amendment to amend Section 3.1 Community Development Element pertaining to the Agriculture Industrial (A/I) General Plan designation. The amendments would:

- Add the A/I designation to the Land Use Designation table (pg. 3.1-25);
- Remove the existing specific locational criteria from the general description page (pg. 3.1-57.1); and
- Add the updated specific locational criteria and other related policies to Land Use Goal LU-7 (pg.3.1-61) pertaining to:
 - Freeway/Highway Access
 - Parcel Size Exceptions
 - Prime Farmland
 - Primary or Secondary Zone of the Delta

Recommendation

1. Forward General Plan Text Amendment No. PA-2200212 to the Board of Supervisors with a recommendation for approval based on the ability to make the required Basis for General Plan Text Amendment (Attachment D; Findings)

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NOTIFICATION & RESPONSES

(See Attachment A, Response Letters)

Public Hearing Notices

Legal ad for the public hearing published in the Stockton Record: January 23, 2023

Number of Public Hearing notices: 7

Date of Public Hearing notice mailing: January 20, 2023.

Referrals and Responses

- **Project Referral with Environmental Determination Date:** November 1, 2022

- **Project Re-Referral with Environmental Determination Date:** December 28, 2022

Agency Referrals	Response Date – Environmental Determination	Response Date – Environmental Determination Re-Referral
County Departments		
Ag Commissioner		
Assessor		
Board of Supervisors		
Community Development		
Building Division		
Fire Prevention Bureau		
Code Enforcement		
County Counsel		
Public Works	11/2/22	
Environmental Health	11/4/22	1/4/23
Sheriff's Office		
State Agencies		
C.H.P.		
C.R.W.Q.C.B.		
Delta Protection Commission		
Delta Stewardship Council		
Department of Transportation		
District 10		
Department of Boating & Water		
Department of Conservation		
Department of Motor Vehicles		
Fish & Wildlife, Division: All		
Native American Heritage Commission		

Agency Referrals	Response Date – Environmental Determination	Response Date – Environmental Determination Re-Referral
Federal Agencies		
F.E.M.A.		1/17/23
Fish & Wildlife		
Local Agencies		
All Cities		
All Fire Districts		
All Municipal Advisory Councils		
Mosquito & Vector Control		
S.J.C.O.G.		
San Joaquin Valley Air Pollution Control District		
Miscellaneous		
Buena Vista Rancheria		
California Tribal TANF Partnership		
California Valley Miwok Tribe		
Haley Flying Service		
North Valley Yokuts Tribe		
P.G.&E.		
Port of Stockton		
Precissi Flying Service		
San Joaquin Farm Bureau	11/28/22	1/26/23
Sierra Club		
United Auburn Indian Community	11/1/22	12/28/22

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ANALYSIS

Background

On January 25, 2022, the Board of Supervisors adopted a General Plan Text Amendment and Development Title Text Amendment No. PA-2100196 to establish a new General Plan designation of A/I (Agriculture/Industrial) and a new zone of AI (Agriculture-Industrial). In addition to the text amendments, the Board of Supervisors also approved General Plan Map Amendment No. PA-2100197 and Zone Reclassification No. PA-2100198 to change the General Plan designation and zone of 30 plus parcels to the A/I General Plan designation and corresponding AI zone. Parcels that were proposed to be changed by the County were reviewed for the criteria explicitly stated in the text language. Since approval of the text amendments, several additional property owners have applied for, or attempted to apply for, the redesignation and rezoning of their property to A/I and AI. In an effort to accommodate more property owners that were interested in the new General Plan designation and zone, County staff asked the Board of Supervisors for additional direction. On September 13, 2022, the Board of Supervisors directed staff to work on a General Plan text amendment for policy modifications that would allow for more flexibility in application of the A/I General Plan designation and AI zone.

Proposed Text Amendments

The proposed General Plan text amendments were drafted and sent out to agencies for an initial review on November 1, 2022. Upon receiving feedback from several agencies, which will be discussed later in this report, further revisions were made and referred out for review on December 28, 2022. The following is a summary of the proposed General Plan Text Amendment.

Land Use Designation Table

The General Plan contains a Land Use Designation table on page 3.1-19 that lists all of the land use designations and basic details related to general standards and areas where each of the designations are allowed, such as Urban or Rural Communities, City Fringe Areas, or other County areas. When the A/I General Plan designation was approved, the table was not updated to include the new designation, and as a result, is now being corrected.

General Description of A/I

In the General Plan, each land use designation has a dedicated description page. The A/I description page was updated as a result of adding A/I designation goals to Land Use Goal LU-7 (page 3.1-60 of the General Plan).

Land Use Goal LU-7

The proposed locational criteria changes address the following:

- **LU-7.18 Freeway/Highway Access** – In order to allow additional potential locations in the County, including the southern part of the County where direct access to an interchange or a State Route is less common, language was added to allow for locations near Interstate 580 or State Route 132 via a designated haul route approved by the Department of Public Works.
- **LU-7.19 Parcel Size Exceptions** – In response to constituent requests and Board of Supervisors' direction to consider larger parcels that are not viable for farming, language was added to allow for a review of agricultural viability for parcels that exceed the previous 20-acre maximum.
- **LU 7.20 Prime Farmland** – Although the intention was always to exclude prime farmland and properties under a Williamson Act contract from the list of parcels proposed for redesignation to A/I, the General Plan text did not explicitly exclude prime farmland and properties under a Williamson Act contract. In order to add clarity and continue to protect agricultural land, these specifics have been included in the proposed text amendment.

- **LU 7.21 Primary or Secondary Zone of the Delta** – Based upon a constituent request and Board of Supervisors' direction, Community Development Department staff considered permitting AI parcels on a case-by-case basis in the Delta Primary and Secondary Zones. However, based on feedback from the Delta agencies, as discussed later in this report, the recommended text only allows case-by-case review of properties within the Secondary Zone of the Delta for consistency with the Delta Protections Commission's Land Use Resource Management Plan and the Delta Stewardship Council's Delta Plan. Properties within the Primary Zone of the Delta are still prohibited.

Agency Responses

San Joaquin Farm Bureau Federation

On November 1, 2022, an initial referral with the draft text amendment language was sent out to agencies and interested parties. The San Joaquin Farm Bureau Federation submitted a letter dated November 28, 2022, in opposition to the text amendment due to concerns that the changes would relax development standards in agricultural zones, allow for an easier path to the development of prime agricultural land, and the potential for cancellation of Williamson Act contracts.

The Agriculture/Industrial General Plan designation is intended for parcels that are not ideal for farming operations, but also not likely to develop during the planning period of the General Plan. Therefore, the proposed text amendment specifically excludes parcels that are designated as Prime Farmland, Farmland of Statewide Importance, or Unique Farmland by the Department of Conservation's Farmland Mapping and Monitoring Program, which could be ideal for farming operations. Parcels that are under a Williamson Act contract are also excluded with the proposed text amendment due to concerns about compatibility with the allowed uses.

Based on the comments received from the San Joaquin Farm Bureau Federation, the Community Development Department revised the text amendment language to more clearly state these exclusions and sent out a re-referral on December 28, 2022, to the San Joaquin Farm Bureau Federation and all prior recipients of the original referral.

The Community Development Department met with the San Joaquin Farm Bureau Federation on January 19, 2023, to explain the proposed text amendment and discuss their concerns. The San Joaquin Farm Bureau Federation indicated that, although the proposed language in Land Use Goal LU 7.20 excludes property that is prime farmland or currently under a Williamson Act contract, there were still concerns about other farmland being redesignated, or property owners removing their Williamson Act contracts and requesting a redesignation. There was also extensive discussion regarding the Land Use Goal LU-7.18 in terms of allowing locations near Interstate 580 and State Route 132 that have access via a designated haul route that could possibly be located in more rural areas. Additionally, the San Joaquin Farm Bureau Federation indicated concerns about parcels greater than 20 acres in size being redesignated. However, the County would review these parcels on a case-by-case basis for evidence that such parcels are not viable for farming prior to allowing parcels greater than 20 acres to be redesignated.

Delta Agencies

Community Development Department staff met with Delta Protection Commission staff on November 30, 2022, and Delta Stewardship Council staff on December 1, 2022. Both agencies indicated concern about potential impacts to agriculture and allowing the Agricultural Industrial land use designation in the Primary Zone of the Delta. The agencies both agreed that individual projects involving property within the Secondary Zone of the Delta could be considered on a case-by-case basis. As a result, the Community Development Department further amended the proposed language to remove the option to consider properties within the Primary Zone of the Delta, even on a case-by-case basis. As noted above, on December 28, 2022, a re-referral was sent out to these agencies with the updated language. No additional comments have been received from the Delta Protection Commission or the Delta Stewardship Council.

Basis for General Plan Text Amendments

To approve a General Plan Text Amendment, the Planning Commission and Board of Supervisors shall determine that the internal consistency of the General Plan is maintained in adoption of the proposed General Plan Amendment. (Development Title Section 9-803.4) Amendments are proposed to preserve viable agricultural land while accommodating agricultural services and related activities to support the agricultural industry, as stated in Land Use Goal LU-7. As such, the proposed text amendments are consistent with the goals, policies, objective, and implementation measure of the 2035 General Plan.

Notice of Exemption

California Environmental Quality Act (CEQA) Section 15061(b)(3) states that a project is exempt from CEQA if the local agency determines that the activity has no potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may cause a significant effect on the environment, the activity is not subject to CEQA and, therefore, exempt from CEQA. The Community Development Department has determined that the proposed Development Title Text Amendment has no potential for causing a significant effect on the environment because it is a General Plan Text Amendment to clarify the locational criteria for an existing land use designation, and any projects applied for under this designation would be reviewed on an individual basis for compliance with CEQA, as necessary. The General Plan Text Amendment will not have a significant effect on the environment and, therefore, the project is not subject to CEQA.

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RECOMMENDATION

It is recommended that the Planning Commission:

1. Forward General Plan Text Amendment No. PA-2200212 to the Board of Supervisors with a recommendation for approval based on the ability to make the required Basis for General Plan Text Amendment (Attachment D; Findings)

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Attachment A

Response Letters

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SAN JOAQUIN
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Department of Public Works

Fritz Buchman, Director

Alex Chetley, Deputy Director - Development

David Tolliver, Deputy Director - Operations

Najee Zarif, Deputy Director - Engineering

Kristi Rhea, Business Administrator

November 2, 2022

MEMORANDUM

TO: Community Development Department
CONTACT PERSONS: Megan Aguirre

FROM: Christopher Heylin, Development Services Engineer *CH*
Development Services Division

SUBJECT: PA-2200212; A General Plan Text Amendment to amend Section 3.1 Community Development Element pertaining to the locational criteria and size requirements for the Agriculture Industrial (A/I) General Plan designation. The amendments would further clarify where the designation is permitted, while adding additional locations on or near identified state routes and also potentially allowing the application of the designation to parcels larger than 20 acres in size that are no longer viable for agricultural purposes. The A/I designation would also be added to the Land Use Designation table in the same section.

PROPERTY OWNERS: San Joaquin County

APPLICANT: Same

RECOMMENDATIONS:

- 1) None.

CH:DS

1810 East Hazelton Avenue | Stockton, California 95205 | **T** 209 468 3000 | **F** 209 468 2999



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Environmental Health Department

Jasjit Kang, REHS, Director

Muniappa Naidu, REHS, Assistant Director

PROGRAM COORDINATORS

Natalia Subbotnikova, REHS

Jeff Carruesco, REHS, RDI

Willy Ng, REHS

Steven Shih, REHS

Michelle Henry, REHS

Elena Manzo, REHS

January 4, 2023

To: San Joaquin County Community Development Department
Attention: Megan Aguirre

From: Michael Suszycki, (209) 598-7001
Senior Registered Environmental Health Specialist

RE: **PA-2200212 (TA), Re-Referral, SU0015237**
1810 E. Hazelton Ave., Stockton

(Handwritten "OK" in blue ink)

The Environmental Health Department has no comments or recommendation for this application at this time.

1868 E. Hazelton Avenue | Stockton, California 95205 | T 209 468-3420 | F 209 464-0138 | www.sjcehd.com



SAN JOAQUIN
— COUNTY —
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Environmental Health Department

Jasjit Kang, REHS, Director

Muniappa Naidu, REHS, Assistant Director

PROGRAM COORDINATORS

Robert McClellon, REHS

Jeff Carruesco, REHS, RDI

Willy Ng, REHS

Steven Shih, REHD

Michelle Henry, REHS

Elena Manzo, REHS

November 4, 2022

To: San Joaquin County Community Development Department
Attention: Megan Aguirre

From: Michael Suszycki, (209) 598-7001
Senior Registered Environmental Health Specialist

A handwritten signature in blue ink, appearing to be "MS", enclosed in a blue circular scribble.

RE: **PA-2200212 (TA), Referral, SU0015237**
1810 E. Hazelton Ave., Stockton

The Environmental Health Department has no comments or recommendations for this application at this time.

1868 E. Hazelton Avenue | Stockton, California 95205 | T 209 468-3420 | F 209 464-0138 | www.sjcehd.com

U.S. Department of Homeland Security
FEMA Region IX
1111 Broadway, Suite 1200
Oakland, CA. 94607-4052



January 17, 2023

Megan Aguirre, Project Planner
San Joaquin County
Community Development Department
1810 East Hazelton Avenue
Stockton, California 95205

Dear Ms. Aguirre:

This is in response to your request for comments regarding Application Referral Re Referral (Revised Text Language) PA 2200212 (TA), General Plan Text Amendment.

Please review the current effective Flood Insurance Rate Maps (FIRMs) for the County of San Joaquin ((Community Number 060299), Maps revised October 20, 2016. Please note that San Joaquin County, California is a participant in the National Flood Insurance Program (NFIP). The minimum, basic NFIP floodplain management building requirements are described in Vol. 44 Code of Federal Regulations (44 CFR), Sections 59 through 65.

A summary of these NFIP floodplain management building requirements are as follows:

- All buildings constructed within a riverine floodplain, (i.e., Flood Zones A, AO, AH, AE, and A1 through A30 as delineated on the FIRM), must be elevated so that the lowest floor is at or above the Base Flood Elevation level in accordance with the effective Flood Insurance Rate Map.
- If the area of construction is located within a Regulatory Floodway as delineated on the FIRM, any *development* must not increase base flood elevation levels. **The term *development* means any man-made change to improved or unimproved real estate, including but not limited to buildings, other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of equipment or materials.** A hydrologic and hydraulic analysis must be performed *prior* to the start of development and must demonstrate that the development would not cause any rise in base flood levels. No rise is permitted within regulatory floodways.

www.fema.gov

Megan Aguirre, Project Planner

Page 2

January 17, 2023

- Upon completion of any development that changes existing Special Flood Hazard Areas, the NFIP directs all participating communities to submit the appropriate hydrologic and hydraulic data to FEMA for a FIRM revision. In accordance with 44 CFR, Section 65.3, as soon as practicable, but not later than six months after such data becomes available, a community shall notify FEMA of the changes by submitting technical data for a flood map revision. To obtain copies of FEMA's Flood Map Revision Application Packages, please refer to the FEMA website at <http://www.fema.gov/business/nfip/forms.shtm>.

Please Note:

Many NFIP participating communities have adopted floodplain management building requirements which are more restrictive than the minimum federal standards described in 44 CFR. Please contact the local community's floodplain manager for more information on local floodplain management building requirements. The San Joaquin County floodplain manager can be reached by calling Shayan Rehman, Senior Engineer, Flood Control Water District, at (209) 468-9360.

If you have any questions or concerns, please do not hesitate to contact Antoinette Stein at antoinette.stein@fema.dhs.gov of the Mitigation staff.

Sincerely,

Michael Nakagaki, Branch Chief
Floodplain Management and Insurance Branch

cc:

Shayan Rehman, Senior Engineer, Flood Control Water District, San Joaquin County
Alex Acosta, State of California, Department of Water Resources, North Central Region Office
Kelly Soule, State of California Department of Water Resources, Sacramento Headquarters
Office

Antoinette Stein, NFIP Floodplain Planner, DHS/FEMA Region IX
Kenneth Sessa, Acting Environmental Officer, DHS/FEMA Region IX

www.fema.gov

Email addresses: Megan Aguirre meaguirre@sjgov.org
Shayan Rehman shayan.rehman@sjgov.org
Alex Acosta alex.acosta@water.ca.gov
Kelly Soule kelly.soule@water.ca.gov
Antoinette Stein antoinette.stein@fema.dhs.gov
Kenneth Sessa kenneth.sessa@fema.dhs.gov

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SAN JOAQUIN FARM BUREAU FEDERATION

MEETING TODAY'S CHALLENGES / PLANNING FOR TOMORROW

January 25th, 2023

San Joaquin County Community Development Department
Development Services Division
Attn: Megan Aguirre
1810 E. Hazleton Avenue
Stockton, CA 95205

Re: PA-2200212 (TA)

Dear Ms. Aguirre:

The San Joaquin Farm Bureau Federation (SJFB) is a non-profit, voluntary membership organization whose purpose is to protect and promote agricultural interests throughout San Joaquin County (SJC). Farm Bureau is the county's largest farm organization, currently representing over 1,400 farm families and individual members. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of SJC's resources.

I would like to start by thanking you for taking the time to meet with Farm Bureau to discuss the proposed Text Amendment. After the meeting, we would still like to express our concerns regarding PA-2200212 (TA), a General Plan Text Amendment to amend the requirements for the Agriculture Industrial (A/I) General Plan designation fearing it will relax development standards in agricultural zones.

As discussed in the meeting, we feel that in order to be equal and fair throughout the county, there needs to be an addition to the final bullet point in LU-7.18 Freeway/Highway Access, adding a "one-half (1/2) mile radius from the centerline of Interstate 580 or State Route 132 with a designated truck haul route." By keeping the language of "Near Interstate 580 or State Route 132...", we fear that it will open more opportunities for development larger parcels of valuable farmland along these highways.

We understand that there is a high need for truck parking in the county, and we are not opposed to them, but we feel that they should be limited to very specific areas in the county. At the least, there should be a limited number of projects approved per year. It is also important that we inquire about the requirements and restrictions of these projects (i.e., hours of operation, lighting, setbacks from agriculture, fencing, etc.) and how they may affect surrounding homes and/or operations.

Finally, before we feel that we can either support or deny the proposed amendment, we demand that we see the GIS overlay map with the proposed parcels and their soil quality. This map will quantify the number of parcels that would be eligible for conversion from agriculture production to irreversible development.

If you would like to speak about this issue in further detail, please contact the San Joaquin Farm Bureau Federation office at (209) 931-4931. Please keep us informed as this proposal moves forward.

Sincerely,

Andrew Watkins
SJFB President

3290 NORTH AD ART ROAD • STOCKTON, CA • 95215 • (209) 931-4931 • (209) 931-1433 Fax

WWW.SJFB.ORG



SAN JOAQUIN FARM BUREAU FEDERATION

MEETING TODAY'S CHALLENGES / PLANNING FOR TOMORROW

November 28th, 2022

San Joaquin County Community Development Department
Development Services Division
Attn: Megan Aguirre
1810 E. Hazleton Avenue
Stockton, CA 95205

Re: PA-2200212 (TA)

Dear Ms. Aguirre:

The San Joaquin Farm Bureau Federation (SJFB) is a non-profit, voluntary membership organization whose purpose is to protect and promote agricultural interests throughout San Joaquin County (SJC). Farm Bureau is the county's largest farm organization, currently representing over 1,400 farm families and individual members. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of SJC's resources.

We would like to express our concern regarding PA-2200212 (TA), a General Plan Text Amendment to amend the requirements for the Agriculture Industrial (A/I) General Plan designation fearing it will relax development standards in agricultural zones. The San Joaquin County General Plan (GP) is robustly protective of SJC's agricultural heritage and landscape in several policies, goals and objectives, and the proposed GP text amendment would be a striking departure from not only numerous other sections of the GP with which it would be internally inconsistent, but also stray from past practices and policies to protect agriculture in SJC.

Secondly, we fear the proposed exemption from the California Environmental Quality Act (CEQA) would ultimately allow for an easier path to the development of prime agricultural land. The proposed text amendment to the GP appears closely linked to, and driven by, a specific development application. As such, it should not be exempt from CEQA review, and the county should undertake full environmental review of the foreseeable environmental impacts of the known projects which it will enable, if it wishes to go forward.

Agriculture is vital to SJC bringing in nearly \$3.2 million to the local economy in 2022. The paving over and development of prime agricultural lands permanently takes it out of production. With an ever-growing population and decreasing acreage of valuable farmland, it is vital that we protect existing land to stay in production agriculture.

Most importantly, the Williamson Act. Cancellations on protected parcels should not occur as a matter of economic convenience; they should occur only in extraordinary circumstances. The Williamson Act is an expression of state policy that protected lands and ag preserves will serve to discourage leapfrog, piecemeal, and discontinuous development, and to conserve the state's irreplaceable inventory of farmland.

If you would like to speak about this issue in further detail, please contact the San Joaquin Farm Bureau Federation office at (209) 931-4931. Please keep us informed as this proposal moves forward.

Sincerely,

Andrew Watkins
SJFB President

3290 NORTH AD ART ROAD • STOCKTON, CA • 95215 • (209) 931-4931 • (209) 931-1433 Fax

WWW.SJFB.ORG



Thank you for consulting with the UAIC

Please complete one form for each notification.

How to submit a consultation notification or project update:

1. One form must be completed for each project.
2. Forms cannot be saved and completed at a later time.
3. Include all relevant project information.
4. Upload file attachments. Multiple files can be attached.
5. Submit form.
6. You will receive a submission receipt via email when submission is complete. UAIC prefers our online submission form over certified or hard copy letters.

Contact the Tribal Office at (530) 883-2390 for questions or concerns. Ask for Tribal Historic Preservation or use the [contact form located on our website](#).

Contact Information

Consulting on Behalf of * San Joaquin County Community Development Department
Lead Agency, Consulting Firm, Tribe

Mailing Address

Street Address
1810 E. Hazelton Ave.
Address Line 2
City State / Province / Region
Stockton California
Postal / Zip Code
95205

Point of Contact for Consultation * Megan Aguirre
Primary Contact Name

Point of Contact Email * meaguirre@sjgov.org

Second Point of Contact ☐ Yes
Is there more than one point of contact for this project?

Regulatory

Consulting Under * This project fall under the following regulatory requirements:

☐ Federal ☐ State of California ☐ Federal and State
☒ Other
County

Project Notification Information

Project Name * General Plan Text Amendment PA-2200212
Please include Name and Reference Number (if applicable)

This is a *	<input checked="" type="radio"/> New Project <input type="radio"/> Public Hearing <input type="radio"/> Request for Information	<input type="radio"/> Notice of Preparation (NOP) <input type="radio"/> Notice of Availability (NOA) <input type="radio"/> Other
Project Description	A General Plan Text Amendment to amend Section 3.1 Community Development Element pertaining to the locational criteria and size requirements for the Agriculture Industrial (A/I) General Plan designation. The amendments would further clarify where the designation is permitted, while adding additional locations on or near identified state routes and also potentially allowing the application of the designation to parcels larger than 20 acres in size that are no longer viable for agricultural purposes. The A/I designation would also be added to the Land Use Designation table in the same section. Please include a brief project description	
Project/Construction Year *	2022 Please select the year your project will initiate	
Project/Construction Season	Please select the season your project will initiate (if applicable)	
Environmental Document Timeline	Please share when your final environmental document is planned for public review	
Location	Please include county, city, and address (if available)	

Project Documents
 Documents uploaded to this form are secure and only accessible by the Tribal Historic Preservation team

Notification *	Attach notification letters or announcement PA-2200212 (TA) Public Hearing - Referral.pdf 204.35KB 50mb maximum upload size (per file)
Reports	Attach project reports, project descriptions, or supporting documents. Please add the following if available: Cultural, Biology, Arborist Draft Ordinance 11-01-2022.pdf 262.56KB 50mb maximum upload size (per file)
Location Map	Attach maps and location files. Shape files are preferred File extensions allowed: pdf, jpg, png, kmz, lpk, dbf, prj, shp, abn, sbx, xml, shx, cpg, .zip. NOTE: 50mb maximum upload size (per file).

Send Submission Receipt To

<input checked="" type="checkbox"/> Primary Contact <input type="checkbox"/> Secondary Contact <input checked="" type="checkbox"/> Different Email
New Email * aasio@sjgov.org

***This form submission page is offered for the convenience of consulting agencies, developers, and their respective consultants. UAIC reviews all submissions received, but makes no guarantee that submission via this online form satisfies any particular consultation or notice requirement that exists under state or federal law.



Thank you for consulting with the UAIC

Please complete one form for each notification.

How to submit a consultation notification or project update:

1. One form must be completed for each project.
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Contact Information

Consulting on Behalf of * San Joaquin County Community Development Department
Lead Agency, Consulting Firm, Tribe

Mailing Address

Street Address
1810 E. Hazelton Ave.
Address Line 2
City State / Province / Region
Stockton California
Postal / Zip Code
95205

Point of Contact for Consultation * Megan Aguirre
Primary Contact Name

Point of Contact Email * meaguirre@sjgov.org

Second Point of Contact ☐ Yes
Is there more than one point of contact for this project?

Regulatory

Consulting Under * This project fall under the following regulatory requirements:

☐ Federal ☐ State of California ☐ Federal and State
☒ Other
County

Project Notification Information

Project Name * General Plan Text Amendment PA-2200212
Please include Name and Reference Number (if applicable)

This is a *	<input checked="" type="radio"/> New Project <input type="radio"/> Public Hearing <input type="radio"/> Request for Information	<input type="radio"/> Notice of Preparation (NOP) <input type="radio"/> Notice of Availability (NOA) <input type="radio"/> Other
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Project/Construction Season	Please select the season your project will initiate (if applicable)	
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Location Map	Attach maps and location files. Shape files are preferred File extensions allowed: pdf, jpg, png, kmz, lpk, dbf, prj, shp, abn, sbx, xml, shx, cpg, .zip. NOTE: 50mb maximum upload size (per file).	
Send Submission Receipt To		
<input checked="" type="checkbox"/> Primary Contact <input type="checkbox"/> Secondary Contact <input checked="" type="checkbox"/> Different Email		
New Email *	aasio@sjgov.org	
***This form submission page is offered for the convenience of consulting agencies, developers, and their respective consultants. UAIC reviews all submissions received, but makes no guarantee that submission via this online form satisfies any particular consultation or notice requirement that exists under state or federal law.		



SAN JOAQUIN
—COUNTY—
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Community Development Department

Planning · Building · Code Enforcement · Fire Prevention · GIS


Attachment B **Environmental** **Document**

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NOTICE OF EXEMPTION

TO:  Office of Planning & Research
P. O. Box 3044, Room 212
Sacramento, California 95812-3044

FROM: San Joaquin County
Community Development Department
1810 East Hazelton Avenue
Stockton, California 95205

 County Clerk, County of San Joaquin

Project Title: Text Amendment No. PA-2200212

Project Location - Specific: The project site is Countywide. (Supervisory District: All)

Project Location – County: San Joaquin County

Project Description: A General Plan Text Amendment to amend Section 3.1 Community Development Element pertaining to the locational criteria and size requirements for the Agriculture Industrial (A/I) General Plan designation. The amendments would further clarify where the designation is permitted, while adding additional locations on or near identified state routes and also potentially allowing the application of the designation to parcels larger than 20 acres in size that are no longer viable for agricultural purposes. The A/I designation would also be added to the Land Use Designation table in the same section.

Project Proponent(s): San Joaquin County

Name of Public Agency Approving Project: San Joaquin County Board of Supervisors

Name of Person or Agency Carrying Out Project: Megan Aguirre, Senior Planner
San Joaquin County Community Development Department

Exemption Status:
General Exemptions. (Section 15061[b](3))

Exemption Reason:

This project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3). Section 15061(b)(3) states that "CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." This project has no potential for causing a significant effect on the environment because it is a General Plan Text Amendment to clarify the locational criteria for an existing land use designation, and any projects applied for under this designation would be reviewed on an individual basis for compliance with CEQA, as necessary. The General Plan Text Amendment will not have a significant effect on the environment and, therefore, the project is not subject to CEQA.

Lead Agency Contact Person:
Megan Aguirre Phone: (209) 468-3144 FAX: (209) 468-3163 Email: meaguirre@sjgov.org

Signature: _____

Date: _____

Name: Allen Asio

Title: Deputy County Clerk

Signed by Lead Agency

Date Received for filing at OPR: _____

*Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.*

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Attachment C **Draft Ordinance**

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BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN,
STATE OF CALIFORNIA

ORDINANCE NO.

**AN ORDINANCE AMENDING THE GENERAL PLAN 2035 OF SAN JOAQUIN COUNTY
RELATIVE TO CHAPTER 3.1 COMMUNITY DEVELOPMENT ELEMENT (LAND USE
DESIGNATION/LABEL TABLE AND AGRICULTURAL LANDS,
AGRICULTURE/INDUSTRIAL [A/I])**

The Board of Supervisors of the County of San Joaquin ordains as follows:

Section 1. Chapter 3.1 Community Development Element, Land Use Designation/Label table, page 3.1-25 of the San Joaquin County General Plan 2035 is hereby amended as follows:

Land Use Designation/Label	Standards			Where Typically Allowed ¹			
	Lot Size (Acres)	Density Range (DU/A)	FAR Range	Urban Community	Rural Community	City Fringe Area	Other County
Agricultural Designations							
 General Agriculture (A/G) (See page 3.1-57)	20.0 Minimum ²	0.0 – 0.05	0.00 – 0.01 ³	X	X	X	X
 Limited Agriculture (A/L) (See page 3.1-58)	5.0 Minimum	0.0 – 0.20	0.00 – 0.01 ³	X	X	X	X
 Agricultural- Urban Reserve (A/UR) (See page 3.1-59)	5.0 – 10.0	0.0 – 0.05	0.00 – 0.01 ³	X		X	X

Land Use Designation/Label	Standards			Where Typically Allowed ¹			
	Lot Size	Density		Urban Community	Rural Community	City	
		Range	FAR			Fringe Area	Other County
	(Acres)	(DU/A)	Range				

Agriculture

Industrial

(A/I)

1.0-20.0

0.0-0.05

0.0 0.01³

x

x

x

x

(See page
3.1-5.7.1)

Open Space and Resource Conservation Designations



Parks and Recreation (OS/PR)

N/A

N/A

0.00 –
0.01³

x

x

x

x

(See page
3.1-63)



Resource Conservation (OS/RC)

N/A

N/A

0.00 –
0.01³

x

x

x

x

(See page
3.1-64)

1) Indicates areas of the County where Land Use Designations are typically allowed. The County may apply any designation in any unincorporated area of the County.

2) General Agriculture (A/G) minimum lot size shall be limited to 160.0 acres where no surface irrigation water is available.

3) Floor Area Ratio for the identified Land Use Designations may exceed the allowed range.

Section 2. Chapter 3.1 Community Development Element, Agricultural Lands, Agriculture/Industrial (A/I), page 3.1-57.1 of the San Joaquin County General Plan 2035 is hereby amended as follows:

Agriculture/Industrial (A/I)

This designation provides for limited dry uses that complement both agricultural and industrial business and will not generate a significant amount of waste or utilize a large amount of water. Other agricultural uses may also be permitted where feasible; however, the Agriculture /Industrial

designation generally applies to parcels that are not ideal for large-scale or small-scale farming operations due to size, location, irregular shape or classification of farmland, and are not likely to develop during the planning period of the General Plan (i.e., 2035) due to a lack of available public services. Typical uses include truck parking, truck sales, and other limited dry uses not dependent on public services. Parcels considered for this designation shall be located ~~within a one-half (1/2) mile radius from the centerline of an interchange along Interstate 5, Interstate 205, I-580, or State Route 99, or other state highway. Parcels must also have~~ with access to a publically-publicly maintained roadway and shall be subject to meeting all locational criteria found in Land Use Goal LU-7 ~~and be located outside of the primary and secondary zones of the Delta.~~

Allowed Uses

This designation provides for the following uses that complement both agricultural and industrial businesses:

- Single family detached dwellings
- Farm-employee housing and farm labor camps
- Compatible uses with agriculture
- Agricultural uses that are permitted in the General Agriculture designation and zone
- Dry uses benefitting from direct access to major interstates and highways
- Truck parking
- Truck sales
- Warehousing operations
- Uses that require minimal infrastructure improvements

Development Standards

Development within this designation is subject to the following standards:

- Minimum Density: N/A
- Maximum Density: 0.05 Dwelling Units/Acre
- Minimum FAR: N/A
- Maximum FAR: 0.01
- Minimum Lot Size: 1.0 acre

- Maximum Lot Size: 20.0 acres

See policies on page 3.1-60 for additional development regulations and standards.

Section 3. Chapter 3.1 Community Development Element, Goal LU-7, page 3.1-61 of the San Joaquin County General Plan 2035 is hereby amended as follows:

Agriculture Industrial Development

LU-7.18 Freeway/Highway Access

The County shall require that Agriculture/Industrial designated parcels have freeway or highway access by meeting one or more of the following:

- Within a one-half (1/2) mile radius from the centerline of an interchange along Interstate 5, Interstate 205, Interstate 580, or State Route 99;
- With frontage along State Route 4, State Route 12, or State Route 88; or
- Near Interstate 580 or State Route 132 with a designated haul route.

LU-7.19 Parcel Size Exceptions

The County shall prevent the premature conversion of viable agricultural land by limiting the Agriculture/Industrial development to parcels 20 acres or less in size, except that parcels larger than 20 acres may be considered if it can be proven that the site is no longer viable for agricultural purposes and has historically remained unfarmed. Soil classification and access to irrigation water may be considered when determining viability.

LU-7.20 Prime Farmland

The County shall not apply the Agriculture/Industrial designation to properties that are under a Williamson Act or Farmland Security Zone contract, or to agricultural properties categorized as Prime Farmland, Farmland of Statewide Importance, or Unique Farmland by the California Department of Conservation's Farmland Mapping and Monitoring Program.

LU-7.21 Primary or Secondary Zone of the Delta

The County shall not allow parcels located within the Primary Zone of the Delta to be designated as Agriculture/Industrial, but may consider parcels located within the Secondary Zone of the Delta on a case-by-case basis. Parcel-specific characteristics will be considered in regards to the Delta Protection Commission's Land Use Resource Management Plan and the Delta Stewardship Council's Delta Plan.

Section 4. This Ordinance shall take effect and be in force thirty (30) days after its adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published once (1) in the Stockton Record, a newspaper of general circulation published in the

County of San Joaquin, State of California, with the names of the members of the Board of Supervisors voting for and against the same.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of San Joaquin, State of California, on this _of ____ to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ROBERT RICKMAN
Chairman, Board of Supervisors
County of San Joaquin
State of California

ATTEST: RACHÉL DeBORD
Clerk of the Board of Supervisors
County of San Joaquin
State of California

By: _____
Deputy Clerk



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Attachment D **Findings**

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FINDINGS

Basis for General Plan Text Amendment

The internal consistency of the General Plan is maintained in adoption of the Amendment.

- **This determination can be made because the proposed amendments are intended to clarify the locational criteria for the existing Agriculture Industrial (A/I) land use designation and address preservation of agricultural land and the Primary Zone of the Delta, while also accommodating agricultural services and related activities to support the agricultural industry, as stated in Land Use Goal LU-7. The proposed text amendments are consistent with the goals, policies, objective, and implementation measure of the 2035 General Plan.**

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**Planning Commission Staff Report
Item # 2, February 2, 2023
Appeal to the Planning Commission No. PA-2000214
Prepared by: Stephanie Stowers**

PROJECT SUMMARY

Applicant Information

Property Owner: Kamps Property Management, LLC
Project Applicant: New Cingular Wireless C/O Kevin Gallagher

Project Site Information

Project Address: 22640 South Murphy Road, Escalon
Project Location: On the southeast corner of South Murphy Road and East Colony Road, Ripon

Parcel Number (APN):	245-190-45	Water Supply:	Private (Well)
General Plan Designation:	A/UR	Sewage Disposal:	Private (Septic)
Zoning Designation:	AU-20	Storm Drainage:	Private (On-site)
Project Size:	1,600 square feet	100-Year Flood:	No (X)
Parcel Size:	28.74 acres	Williamson Act:	No
Community:	Ripon	Supervisory District:	5

Project Description

This project is an appeal of the Community Development Department's approval of a Site Approval for an unmanned 125-foot-tall wireless communications tower and associated equipment to be located within a 1,600-square-foot lease area.

Recommendation

1. Deny the appeal and uphold the Community Development Department's approval of Site Approval No. PA-2000214.

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NOTIFICATION & RESPONSES

(See Attachment C, Response Letters)

Public Hearing Notices

Legal ad for the public hearing published in the Stockton Record: January 23, 2023.

Number of Public Hearing notices: 359

Date of Public Hearing notice mailing: January 20, 2023.

Referrals and Responses

Referrals were provided for the project, not the appeals. The responses been included for information only.

- **Project Referral with Environmental Determination Date:** March 18, 2021

Agency Referrals	Response Date - Referral
County Departments	
Ag Commissioner	
Community Development	
Building Division	
Fire Prevention Bureau	
Public Works	5/7/21, 9/9/22
Environmental Health	4/8/21, 9/15/22
Sheriff Office	
Supervisor: Dist. 4	
State Agencies	
Department of Transportation	
Division of Aeronautics	
Fish & Wildlife, Region: 2	
Native American Heritage Commission	
Federal Agencies	
F.A.A.	
F.E.M.A.	
Fish & Wildlife	

Agency Referrals	Response Date - Referral
Local Agencies	
A.L.U.C.	
City of Ripon	4/1/21
Ripon Fire District	
Mosquito & Vector Control	
S.J.C.O.G.	3/22/21
San Joaquin Farm Bureau	3/31/21
San Joaquin Air Pollution Control District	
S.S.J.I.D.	
Ripon Unified School District	
Miscellaneous	
Frontier Telephone	
Haley Flying Service	
North Valley Yokuts Tribe	
United Aurn Indian Community	4/6/21
Buena Vista Rancheria	3/22/21, 10/11/22
P.G.&E.	10/7/22
Precissi Flying Service	
Sierra Club	

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ANALYSIS

Background

Project History

This project was originally reviewed by the Community Development Department in in 2021. The Community Development Department received opposition from the City of Ripon, Colony Oak Elementary School including the signatures of 37 staff members, and 21 members of the community. Additionally, numerous community members and organizations (250+) contacted the Board of Supervisors directly to express their opposition to the project. Staff was unable to make the necessary Findings for Site Approval, specifically Findings 1, 2, 3, & 5). As a result, the project was denied by the Community Development Department.

The Department's denial was appealed to the Planning Commission, where the appeal was denied.

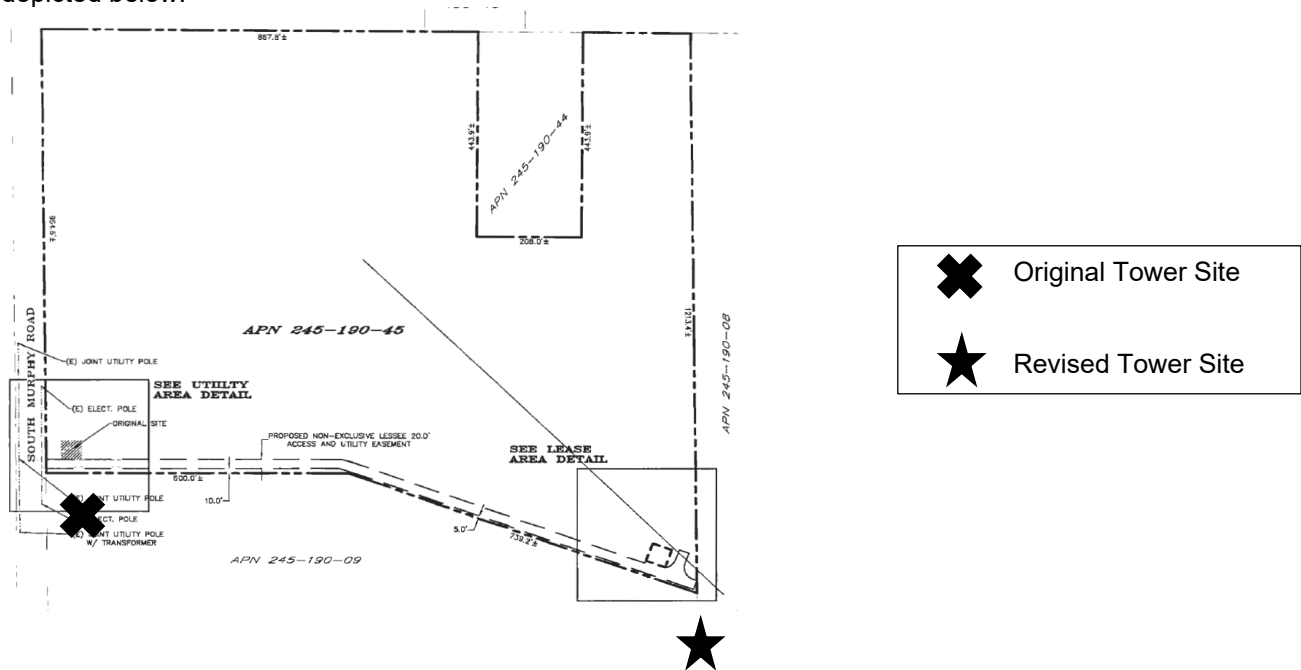
The Planning Commission's denial was appealed to the Board of Supervisors. The item was scheduled to be heard on the July 26, 2022 agenda, however, after extensive discussions between the Office of the County Counsel and the applicant's attorney, Counsel determined that, pursuant to the Telecommunications Act of 1996 and *T-Mobile USA Inc. v. City of Anacortes*, 572 F.3d 987, and a related line of cases, the County must approve the application.

Pursuant to the Telecommunications Act of 1996 and *T-Mobile USA Inc. v. City of Anacortes*, 572 F.3d 987, and a related line of cases, the County *shall not deny* an application for a wireless communication facility such as a cell tower if the applicant has shown that there is a significant gap in cellular coverage and that the proposed location is the least intrusive means to close that gap unless the County can show the "existence of a potentially available and technologically feasible alternative to the proposed location." Here, the Applicant has demonstrated a significant gap in cellular coverage for the community around the proposed tower and that the proposed tower is the least intrusive means to close that gap. The County has not found a feasible alternative site or technology to cover the gap. As a result, Counsel determined that the application cannot be denied.

The item was tabled at the July 26, 2022 Board of Supervisors meeting, and Staff continued review of the application.

Tower Location

The applicant provided a revised site plan, dated September 7, 2022. The cell tower was relocated, as depicted below:



The revised cell tower location is further removed from the Colony Oak Elementary School site, approximately 1,800 feet southeast of school property, and approximately 1,100 feet from the nearest roadway, Murphy Road. Additionally, the height of the tower was reduced from 134 feet to 125 feet tall. The approval of the tower was based on the revised tower location. The applicant provided details and a coverage map (Attachment C, Coverage Map) for the revised location. County staff reviewed these documents determined that the revised location will fill a significant gap in cellular coverage and the proposed tower is the least intrusive means to close that gap. If the approval of this project is upheld and the tower is constructed, it must be sited consistent with the revised location, and cannot exceed 125 feet in height.

Project Approval

Ultimately, the project was approved by the Community Development Department on October 20, 2022.

Pursuant to Development Title Section 9-215.12, the approval of a Site Approval is subject to a 10-day appeal period.

Appeal

On October 31, 2022, the Community Development received 2 appeals, one from Ripon Unified School District (c/o Superintendent Ziggy Robeson), and one from a community member.

Appeal Statements

The appeal statements state concern that the tower is a distraction at Colony Oak Elementary School, safety, siting, impact on property values, and impacts on “flora and fauna;” and question if AT&T has appropriately proven the necessity of the tower.

Response to Appeal Statements

The proposed tower and documentation submitted by the applicant regarding the necessity of the tower were reviewed by Counsel. Ultimately, Counsel determined that the applicant has demonstrated a significant gap in cellular coverage for the community around the proposed tower and that the proposed tower is the least intrusive means to close that gap. The County has not found a feasible alternative site or technology to cover the gap.

As a result, pursuant to the Telecommunications Act of 1996 and *T-Mobile USA Inc. v. City of Anacortes*, 572 F.3d 987, and a related line of cases, the County has no discretion to deny the application.

RECOMMENDATION

It is recommended that the Planning Commission:

1. Deny the appeal and uphold the Community Development Department's approval of Site Approval No. PA-2000214.

Attachments:

A: Appeal Applications

B: Site Plan

C: Coverage Map

D: Agency Response Letters

E: Previously Approved Findings for Site Approval

F: Previously Approved Conditions of Approval

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Attachment A **Appeal**

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Excellence**

Superintendent

Dr. Ziggy Robeson

Board of Trustees

Vince Hobbs

Chad Huskey

Caroline Hutto

Kit Oase

Christina Orlando

District Office

304 N. Acacia Ave.

Ripon, CA 95366

Ph: 209-599-2131

Fax: 209-599-6271

October 28, 2022

San Joaquin County Community Development Department
Attention: Project Planner Stephanie Sowers

Re: Application Number PA-2000214 (SA)

Dear Ms. Sowers,

On behalf of the Ripon Unified School District this letter serves as a notification of our appeal and strongest opposition to the proposed location of a new cell tower adjacent to Colony Oak Elementary School. We are writing to formally appeal the San Joaquin Community Development Department Site Approval of a 125-foot cell tower (wireless telecommunications pole) directly across the street from the Ripon Unified School District's recently modernized Colony Oak School (cell tower application number PA-2000214 SA) located at 16683 Colony Road in Ripon, California.

Our school district recently experienced numerous challenges concerning the location of a cell tower that was located at Weston Elementary School. It was a difficult situation that resulted in hours of staff time, legal costs, significant news media coverage and disruption for our staff, students and community at large. The proposed cell tower location will once again create an ongoing disruption to now another school community. The Colony Oak Elementary School staff submitted a letter opposing the tower. The school community and many families are also opposed to the tower. We have concerns that a cell tower will be an ongoing topic that will undoubtedly distract us from our mission of providing a safe, positive and stimulating environment for our students to learn. The cell tower would be better located a distance farther away from a public school.

Thank you for your attention to this very important matter that will likely affect our students for many years to come. We hope you will reconsider this application and have those making the request seek a better location. We continue to support the primary mission of our Ripon Unified School District to provide a safe, supportive environment for the academic success of every student, and urge you to reconsider your approval of Application PA-2000214 (SA)

Sincerely,

Dr. Kit Oase, Board President

Dr. Ziggy Robeson, Superintendent



APPLICATION – APPEAL OF STAFF ACTION

SAN JOAQUIN COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

FILE NUMBER: - PA-2000214

TO BE COMPLETED BY THE APPLICANT PRIOR TO FILING THE APPLICATION		
APPLICANT INFORMATION		
Name:	Adrienne Williams	
Address:	2010 Fairway Oaks Dr. Ripon, CA 95366	
Phone:	208-520-9540	
BASIS FOR APPEAL		
Action being appealed:	Approval of PA2000214 of Kamps/AT&T tower	
Date of Staff action:	10/20/2022	
State the basis of the appeal. List any findings of fact made by the staff which you feel were wrong and your reasons:		
Please see attached sheets of appeal for findings.		
List any condition(s) and or findings being appealed and give reasons why you think it should be modified or removed:		
Please see attached appeal.		
SIGNATURE		
Signature:	Adrienne Williams	Date: 10/31/2022
STAFF USE ONLY		
Remarks:		Date appeal filed: 10/31/2022
Fee: \$748	Receipt No: R229149, R229148	Appeal Accepted by: G.S.

APPEAL OF SAN JOAQUIN COUNTY COMMUNITY DEVELOPMENT DEPARTMENT SITE APPROVAL NO. PA-200214 of KEMPS PROPERTY MANAGEMENT, LLC (c/o New Cingular Wireless) (APN[s]/Address: 245-190-45/ 22640 S. Murphy Road

The San Joaquin County Community Development Department's (hereinafter the "County") approval of Site Approval No. PA-2000214 dated October 20, 2022, should be reversed and the Site Approval should be denied. In its approval the County noted that pursuant to the Telecommunications Act of 1996 and T-Mobile USA Inc. v. City of Anacortes, 572 F.3d 987, and a related line of cases, the County shall not deny an application for a wireless communication facility such as a cell tower if the applicant has shown there is a significant gap in cellular coverage and that the proposed location is the least intrusive means to close the gap...¹ The County approval alleges that New Cingular Wireless Services, Inc. doing business as AT&T Mobility (hereinafter referred to as "AT&T") "demonstrated a significant gap in cellular coverage for the community around the proposed tower and that the proposed tower is the least intrusive means to close that gap."² This appeal explains why AT&T has not demonstrated that there is a significant gap or that the proposed installation is the least intrusive means to fill a significant gap and therefore the proposed cell tower installation should be denied.

I. AT&T has not demonstrated that there is a significant gap

AT&T states that it would like to bring improved fixed wireless internet and cellular coverage to the area along Milgeo Avenue and Murphy Road, and north past River Road.³ In the description of Coverage Area in its application, AT&T explains that the objective of the proposed facility is to improve both coverage and capacity to the community of Linden and the surrounding areas (emphasis added).⁴ Linden is an entirely different town within San Joaquin county that is located approximately 21 miles away. This discrepancy raises questions as to whether AT&T actually assessed or substantiated the information it submitted or if it simply engages in cut and paste of information from one proposed installation to another.

A. Example of AT&T Customer Showing Service Coverage

The main benefit from the proposed tower is only for the business purposes of AT&T and not that of the residents. There was no testimony as to lack of cell coverage from other providers, and did not provide any resident testimony that they have a problem securing cell coverage in the immediate area.

Indeed, in support of this appeal, please see a video of myself, an AT&T mobile customer, making multiple calls on my AT&T mobile device to different recipients while driving in area that AT&T alleges has significant gaps in coverage. This video is evidence that the area does not have any significant gaps in coverage and that AT&T cannot meet its burden. Thus, on this basis AT&T's permit to install the cell tower should be denied as there is no significant gap in coverage.

¹ San Joaquin County Community Development Department Revised Conditions of Approval dated October 20, 2022, Site Approval No. PA-2000214 of Kamps Property Management, LLC (c/o New Cingular Wireless) (APN[s]/Address: 245-190-45/ 22640 S. Murphy Rd. Ripon)

² San Joaquin County Community Development Department Revised Conditions of Approval dated October 20, 2022, Site Approval No. PA-2000214 of Kamps Property Management, LLC (c/o New Cingular Wireless) (APN[s]/Address: 245-190-45/ 22640 S. Murphy Rd. Ripon)

³ AT&T Project Support Statement Appeal, page 5.

⁴ AT&T Project Support Statement Appeal, page 9.

YouTube link to video demonstrating that there is cell phone coverage:

<https://youtube.com/watch?v=v-Q6FEIM3HQ>

<https://youtu.be/rsplXza56IM>

Screenshot of full coverage on the corner of S. Murphy Road and E. Millgeo Ave in Ripon, CA.



Moreover, Federal law does not guarantee wireless service providers coverage free of small “dead spots.”⁵ Under existing case law, “significant gap” determinations are fact-specific inquiries that defy any bright-line legal rule.⁶ For example, context specific factors that have been considered in assessing the significance of alleged gaps include:

- Whether the gap affected significant commuter highway or railway
- Assessing the nature and character of the area or the number of users in that area who may be affected by the alleged lack of service
- Whether the gap covers well traveling roads on which customers lacking roaming capabilities; and
- Whether the gap poses a public safety risk.

Notably, AT&T has not provided any context specific evidence to support its claim that there is a significant gap in coverage. Instead, AT&T makes a self-serving statement that “this portion of the AT&T network is suffering from poor coverage due to an insufficient amount of telecommunications facilities and the ever-increasing volume of service. Looking at the factors above, the proposed coverage area does not contain a commuter highway or railway. Per the Ripon City website, “[t]he City of Ripon is a relatively small community where the Quality of Life shines like a jewel in the middle of California’s central San Joaquin Valley.”⁷ The city is surrounded by many orchards, farms and other agricultural

⁵ MetroPCS Inc. v. City of San Francisco, United States Court of Appeals, Ninth Circuit Nos. 03-16786, 03-16760 decided March 07, 2005 Citing 259 F.Supp.2d at 1014 to explain “the district court correctly notes that the relevant service gap must be truly ‘significant’ and ‘not merely individual ‘dead spots’ within a greater service area.”

⁶ Id.

⁷ <https://www.cityofripon.org/>

businesses. The last official estimated population data for Ripon shows that there were only 14,966 residents.⁸ Assuming, an average growth rate, the Ripon city population in 2022 is estimated to currently be 16,399.⁹ These context specific facts show that the character of the area and number of users who may be affected by the alleged lack of service are minimal and does not support AT&T's argument that there is a significant gap. Further, the proposed coverage area "along Milgeo Avenue and Murphy Road, and north past River Road" is the least populated area in the city of Ripon with many of the houses surrounded by large parcels of farming land. This is also shown by the project location map provided by AT&T.¹⁰

AT&T has not provided information about the number of users in the area who may be affected by the alleged lack of service. AT&T also has not provided information as to whether the gap covers well traveling roads on which customers lack roaming capabilities. Presumably, because this data does not support its application. Finally, AT&T makes a self-serving statement about the proposed installation increasing public safety without providing any factual evidence. AT&T bears the burden of establishing that there is a significant gap. Its application is deficient and does not provide sufficient information to support that there is a significant gap. AT&T should be required to meet this burden before a permit is granted.

This approach is supported by Federal case law. As long as the zoning boards, city council and other government bodies comply with that procedure, federal judges tend to support them. E.g. in July this year, Extenet was suing the Village of Flower Hill in New York because its cell tower application was denied.¹¹ In the TCA there is a provision that prohibits local governments from engaging in an effective prohibition in providing telecom services. Extenet claimed an effective prohibition because the Village denied their application. A senior federal district court judge in NY disagreed. First, the burden of proof to show an effective prohibition fell on Extenet and it failed to meet that burden. Second, the burden to prove effective prohibition is to show a significant gap in phone service (not just one dropped call) and they are using the least intrusive means to fill that gap. They failed to meet their burden of proof. The court underscored that while new wireless technology may provide greater capacity and speed, their installation is not protected nor preempted by the TCA. The court ruled that under the TCA local governments have authority over the number and placement of wireless facilities.¹²

B. FCC Staff Recommends that Propagation Maps Should Not Be Accepted

The only purported evidence provided by AT&T is propagation maps. However, Propagation maps, such as the ones AT&T provided in its application, should not be accepted to demonstrate a significant gap as they are often inaccurate and unreliable. Computer-generated propagation maps are used by industry that purport to show gaps in phone service. The FCC Enforcement Bureau found them to be inaccurate; the accuracy rate ranged at best 64.3% and at worst 16.2%. FCC field agents performed drive tests across 12 states, driving more than 10,000 miles, and conducting 24,649 tests. They

⁸ <https://population.us/ca/ripon/> accessed 10/27/2022.

⁹ <https://population.us/ca/ripon/> accessed 10/27/2022.

¹⁰ AT&T Project Support Statement Appeal, page 7.

¹¹ Extenet Systems, Inc. v. Village of Flower Hill, 2022 WL 3019650.

¹² See 47 U.S.C. §332(c)(7)(A) entitled "general authority" shows how Congress has preserved to state and local governments the general authority to regulate the siting, placement, construction and maintenance of wireless facilities (cell towers, small cells, etc.) within their respective jurisdictions.

performed an additional 5,916 stationary speed tests at 42 locations in 9 states. During the investigation, requests for information and subpoenas were sent to the carriers. The report summarizes the results in the “Introduction” section, paragraphs nos. 2 through 4. As a result, FCC staff has recommended that the FCC no longer accept computer-generated propagation maps, without actual drive-test data to back them up, and also recommended that penalties be associated with propagation map filings that violate federal law. “FCC Mobility Fund Phase II, Coverage Maps Investigation, Staff Report,” GN Docket No. 19-367¹³

As stated above, there needs to be a significant gap in service. If people can make a call, then telecom has no right to build out their network and the City is not preempted under the TCA.¹⁴ Although the Flower Hill decision applies to New York and is not precedential in California, it is federal persuasive authority. As the court in Flower Hill explained, if you can make a call, there is no need for additional telecom services.¹⁵ The Flower Hill federal court further underscored that while new wireless technology may provide greater capacity and speed, their installation is not protected nor preempted by the TCA.¹⁶ Further, while 5G deployment has been touted to bridge the digital divide, it has been reported by the US Government Accountability Office that 5G deployment is likely to exacerbate disparities in accessing telecommunications services¹⁷

C. Additional Case Law Upholding Insignificant Gaps

Sprint PCS Assets, LLC v. City of Palos Verdes Estates

US Court of Appeals, Ninth Circuit upheld denial of Cell Tower application.

- Court ruled that the City’s decision was “authorized by local law” and supported by The California Constitution
- Sprint PCS did not show a significant gap in coverage
- City’s consideration of aesthetics in denying Sprint’s permit applications “comports with PUC § 7901”
- Link to view case: <http://cdn.ca9.uscourts.gov/datastore/opinions/2009/10/13/05-56106.pdf>

¹³ “... the Commission launched an *investigation* into whether one or more major mobile providers violated the requirements of the one-time collection of coverage data ... Commission staff initially requested information directly from several providers in order to understand providers’ mapping processes, and later *issued subpoenas to Verizon and U.S. Cellular*.” One of the recommendations was that “the Commission should release an Enforcement Advisory on broadband deployment data submissions, including *a detailing of the penalties associated with filings that violate federal law* ... Providers should be required to submit actual on-the-ground evidence of network performance (e.g., speed test measurement samplings, including targeted drive test and stationary test data) that validate the propagation model used to generate the coverage maps.” <https://docs.fcc.gov/public/attachments/DOC-361165A1.pdf>.

¹⁴ Extenet Systems, Inc. v. Village of Flower Hill, 2022 WL 3019650.

¹⁵ *Id.*

¹⁶ Extenet Systems, Inc. v. Village of Flower Hill, 2022 WL 3019650.

¹⁷ US Government Accountability Office 2020 Report “FCC Needs Comprehensive Strategic Planning to Guide Its Efforts,” <https://www.gao.gov/products/gao-20-468> (p.3). Full report <https://www.gao.gov/assets/gao-20-468.pdf> (p.14).

- Los Angeles Times article about this case:
<http://articles.latimes.com/2009/oct/26/local/me-ugly-telecoms26> Sprint Spectrum v. Town of Ontario Planning Board US Court of Appeals, Second Circuit upheld denial of Sprint's application
- Court ruled that holes or dead spots are "insignificant gaps"
- If area is sufficiently serviced by a wireless provider, state and local governments may deny a carrier trying to extend its "coverage" without violating subsection B(i)(II)

II. AT&T has not demonstrated that the proposed installation is the least intrusive means to fill a significant gap

A. AT&T Has Not Met Its Burden to Identify Alternate Locations

In its appeal, dated May 2, 2022, AT&T claimed that it explored a number of possible other locations for a new facility.¹⁸ AT&T provided information for approximately thirteen (13) "Alternate Locations for the New Wireless Facility" and then explained that ten (10) of these locations were not viable because "none comply with the City of Ripon's residential setback."¹⁹

AT&T's identification of ten locations that it knew or should have known were unsuitable appears likely to be done to create a list that it could then strike down in an attempt to show they actually tried to find the least intrusive option. However, identifying ten locations it knew did not comply with Ripon's residential setback actually shows a lack of good faith and cannot be used to meet its burden to identify the least intrusive option. Finally, at least one of the Property Owners that AT&T identified believes that AT&T misrepresented their limited discussions in its appeal. This is concerning as it suggests AT&T may not be acting with full transparency in its process to identify least intrusive alternatives.

Notably AT&T does not state whether this list is the complete list of properties they approached. Given the breadth of undeveloped land in AT&T's proposed search area, the fact that the majority of the properties did not comply with residential setbacks and were too close to the developed area suggests that AT&T has not met its burden to identify and evaluate less intrusive alternatives.

Ignoring the glaring issue with 10 of the 13 sites, AT&T also has not made a showing that it considered less sensitive sites or alternative system designs. Alternatives such as improvements to other towers, equipment changes, or other network changes were briefly discussed, and AT&T did not adequately explore whether these could cause some improvements to service.

AT&T also did not sufficiently address whether the Proposed Facility could be located elsewhere on the site.

- Questions for AT&T:
 - Is this an exhaustive list of all property you considered? Did you attempt to contact all landowners in the proposed search area?

¹⁸ AT&T Appeal of Planning Commission Action filed on May 2, 2022 (Alternate Locations for New Wireless Facility).

¹⁹ Id.

- Specifically, what is not feasible and/or why would the alternate site locations not work?
- Are there financial reasons for not choosing those locations? If so, why are we trying to save AT&T money?
 - There is no provision in the Telecommunications Act or any other law to make financial accommodations for proposed cell tower sites.
 - Must show that there is no other feasible location, not merely that the one chosen was most convenient or least expensive.
- What did the Environmental Assessment (EA) and NEPA Review show? Please provide assessment for review.
 - NEPA compliance must be in accordance with the rules set by the Council of Environmental Quality (to which, by the way, we already made a submission). Environmental impacts must be considered both individually and cumulatively.
 - FCC in 2018 determined that small cell facilities do not require environmental review because their licensing is not an MFA.²⁰ In 2019, the DC Circuit Court found FCC's action arbitrary and capricious; hence, the FCC must conduct NEPA review.²¹

B. Aesthetic Blight

The proposed tower would have a negative impact on the aesthetics of the property for both the surrounding properties and the public at large because a cell tower is an aesthetically displeasing structure no matter what is done to disguise it. Here the tower would not be disguised and there will be no natural buffer. The city of Ripon is fairly flat and it is likely that the 124' tower would be visible from certain vantages and cause aesthetic blight.

If any wireless infrastructure installations are 5G, there may be many towers installed very close together. In order for them to work, they would need to be taller than the trees. Any ensuing multitude of towers will likely be an eyesore to the otherwise scenic beauty of the UDC.

Cities & Municipalities Rejecting Cell Towers for Blight

- La Crescenta, CA
- Burbank, CA
- San Francisco, CA
- Glendale, CA
- Tucson, AZ
- Sonoma, CA

²⁰ FCC Commission Second Report and Order Adopted March 22, 2018

²¹ *United Keetoowah Band of Cherokee Indians et. Al. v. FCC*, United States Court of Appeals for The District of Columbia Circuit, No. 18-1129, dated August 9, 2019.

- Palo Alto, CA
- North Hollywood, CA
- Irvine, CA
- La Jolla, CA
- Palos Verdes Estates, CA
- San Diego County
- La Canada Flintridge, CA
- Echo Park, CA
- Baldwin Hills, CA

1. Devaluation of Property Values

There are potential buyers who do not want to live near cell towers, and in some areas that have cell towers, property values have gone down by as much as 20%.²²

Property values for homes in close proximity to a cell tower, or within the fall zone of the tower, reportedly dropped 15%-21%. As far back as 2004, a study of 9,514 residential sales in 10 suburbs found that the price was reduced, on average, by 15%.²³ During another study spanning 1984 to 2002, 4,283 residential sales in 4 suburbs, found price reductions at about 21%.²⁴ In 2012, a New Jersey appraiser determined that a cell tower close to a home would reduce its value by 10%.²⁵

Residents have expressed their concern over the devaluation of their homes in close proximity to cell towers. For example, in the Town of Islip, on Long Island, the zoning board denied T-Mobile's application for the siting of a cell tower based, among other things, on the potential devaluation of their homes, corroborated by experts who "testified on the neighbors' behalf regarding the anticipated diminution in property values."²⁶

2. Property Values Negatively Affected

The Appraisal Institute Standard

The Appraisal Institute is the largest, global, professional membership organizations for appraisers with 91 chapters throughout the world.

Appraisal professionals use The Appraisal Institute as a standard for professional education and guidance on matters such as depreciated home values resulting from cell towers.

The Appraisal Institute has spotlighted the issue of cell towers causing lower fair market values for homes.

²² *The Electrifying Factor Affecting Your Property's Value*, Wall Street Journal, Aug 15, 2018, <https://www.wsj.com/articles/the-electrifying-factor-affecting-your-property-value-1534343506>.

²³ *Cell Towers and Our Real Estate Values*, October 4, 2014 (citing to a Bond and Hue Proximate Impact Study), <https://dscelltower.wordpress.com/2014/10/04/cell-towers-and-our-real-estate-values/>.

²⁴ *Cell Towers and Our Real Estate Values*, October 4, 2014, <https://dscelltower.wordpress.com/2014/10/04/cell-towers-and-our-real-estate-values/>.

²⁵ *Appraiser: Cell Tower Will Affect Property Values*, Feb 22, 2012 (citing a Bond and Wang study), <https://patch.com/new-jersey/bridgewater/appraiser-t-mobile-cell-tower-will-affect-property-values>.

²⁶ *T-Mobile Northeast LLC v. Town of Islip*, 893 F. Supp. 2d 338, 359 (E.D.N.Y. 2012), <https://casetext.com/case/tmobile-ne-llc-v-town-of-islip>.

Based on definitive research and analysis by Sandy G. Bond, Ph.D. (25 yrs Valuation experience in USA, UK, Australia), cell towers cause a decrease in home value.

Home values may decrease up to 20% or more depending on the proximity to the cell tower and facilities.

3. HUD Categorizes Cell Towers Under "Hazards and Nuisances"

The U.S. Department of Housing and Urban Development (HUD) has categorized cell towers under "Hazards and Nuisances" which real estate appraisers are required to report if property is within the fall zone of the cell tower, and if not within the fall zone, the appraisers must take into consideration the proximity of cell towers in determining the marketability of the property.²⁷ A fall zone is the area which is the furthest distance from a cell tower base in which the tower would collapse in the event of a structural failure.²⁸ HUD prohibits the Federal Housing Administration from underwriting mortgages for homes within the fall zone of a cell tower.²⁹

Federal courts have ruled that adverse aesthetic impacts are a valid legal ground for local zoning authorities in New York to deny applications for wireless facilities.³⁰ In New York, wireless providers are given the status of public utilities for any zoning applications and their applications must comply with the "public necessity" standard under NY case law. Within the context of zoning decisions, this has been interpreted by NY courts to mean that the telecommunications provider must establish: (1) gaps in telecommunications service, (2) the proposed facility locations will remedy those gaps and (3) "the facility presents a minimal intrusion on the community."³¹ In the case of the Town of Islip on Long Island

²⁷ Hazards & Nuisances: Overhead High Voltage Transmission Towers and Lines

Chapter 1: Appraisal & Property Requirements (Page 1-18f)

The appraiser must indicate *whether the dwelling or related property improvements is located within the easement serving a high-voltage transmission line, radio/TV transmission tower, cell phone tower, microwave relay dish or tower, or satellite dish (radio, TV cable, etc).*

If the dwelling or related property improvement is located within such an easement, the DE Underwriter must obtain a letter from the owner or operator of the tower indicating that the dwelling and its related property improvements *are not located within the tower's (engineered) fall distance* in order to waive this requirement. If the dwelling and related property improvements are located outside the easement, the property is considered eligible and no further action is necessary. *The appraiser, however, is instructed to note and comment on the effect on marketability resulting from the proximity to such site hazards and nuisances.*" [Emphasis added]

<https://archives.hud.gov/offices/hsg/sfh/ref/sfh1-18f.cfm>.

²⁸ <https://www.lawinsider.com/dictionary/fall-zone>.

²⁹ *Powerlines and Cell Antennas Lower Property Values*,

<https://ehtrust.org/cell-phone-towers-lower-property-values-documentation-research/>.

³⁰ See, e.g., *Omnipoint Communications Inc. v. The City of White Plains*, 430 F.2d 529 (2d Cir.2005), *T-Mobile Northeast LLC v. The Town of Islip*, 893 F.Supp.2d 338, 361 (2012) ("...the record in this case contains objective evidence that the visible tower would have more than a "negligible" or "minimal" impact on the community. As the Second Circuit noted in *City of White Plains*, when considering the impact on the community, a zoning board can consider community opposition in the form of 'aesthetic objections raised by neighbors who know the local terrain and the sightlines of their own homes.' 430 F.3d at 534. In *City of White Plains*, this included testimony by neighbors that 'the tower would be an eyesore' and arguments from a nearby temple that the tower 'would impair the view from its glass-enclosed chapel'. Id. at 532.")

³¹ *T-Mobile Northeast LLC v. Town of Islip*, 893 F. Supp. 2d 338, 359 (E.D.N.Y. 2012),

<https://casetext.com/case/tmobile-ne-llc-v-town-of-islip>; see also, *Omnipoint Communications Inc. v. The City of White Plains*, 430 F.2d 529 (2d Cir.2005).

denying T-Mobile's cell site application, the federal district court affirmed the zoning board's denial of T-Mobile's application and found that the proposed facility's impact:

"was more than "minimally intrusive" based on evidence that the 120-foot monopole, which would be located *in a pristine parkland and visible from a number of streets and residences*, was not in the nature and character of the surrounding area and would have a negative aesthetic impact on the scenic view of the Sans Souci Nature Preserve and Sans Souci Lakes enjoyed by residents in the community."³²

The court also took notice of other substantial evidence regarding adverse aesthetic impact and diminution of property values. The 120-foot tower would be twice as high as the surrounding trees, visible from a number of residential streets, from the Montauk Highway, and would be even more visible during the winter. One resident likened the potential view of the tower from within his home to "put[ting] a dump across the street." The residents were also involved in beautification and preservation efforts in the area. The zoning board found that the tower would have an "adverse visual impact" near otherwise pristine parkland surrounded by a nature preserve. One expert testified that the "tower cannot effectively be disguised as an evergreen in a neighborhood where the tallest evergreen is just 51 feet high."

The President of the Bayport Civic Association stated that:

"The scenic vista overlooking the Sans-Souci Preserve will be forever disturbed. The nature and character of the hamlet of Bayport will be irreparably scarred by allowing a structure to be built 400 percent taller than any other structure in the town, a town that built itself up on single-story and two-story dwellings."³³

C. Additional Case Law Upholding Aesthetic Blight

Sprint PCS Assets, LLC v. City of Palos Verdes Estates

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- Link to view case: <http://cdn.ca9.uscourts.gov/datastore/opinions/2009/10/13/05-56106.pdf>
- Los Angeles Times article about this case:

<http://articles.latimes.com/2009/oct/26/local/me-ugly-telecoms26>

T-Mobile v. Fairfax County

³² *Id.*

³³ *T-Mobile Northeast LLC v. Town of Islip*, 893 F. Supp. 2d 338, 359 (E.D.N.Y. 2012), <https://casetext.com/case/tmobile-ne-llc-v-town-of-islip>; see also, *Omnipoint Communications Inc. v. The City of White Plains*, 430 F.2d 529 (2d Cir.2005).

US Court of Appeals, Fourth Circuit upheld denial of Cell Tower application due to visual impact.

- Denied application upheld because of visual impact
- T-Mobile failed to show that it explored other feasible options
- T-Mobile failed to show “effective absence of coverage”
- T-Mobile failed to show there are no “reasonable alternative sites” to fill gap Site Alternatives

D. Risk of Cell Tower Fire, Collapse

Cell towers have been known to catch on fire and/or collapse. Cell site developers tend to construct monopole cell towers as quickly and as cheaply as possible, meaning that any quality control over their manufacture, construction or maintenance is probably close to non-existent.

In addition, industry commentary admits that 5G runs hot. That means that thermal buildup at cellular base stations occurs because these base stations are tightly packed with lots of equipment required to do digital to analog conversions, and they are “power-hungry” requiring a large amount of energy consumption.³⁴

A side effect of the 5G array of antennas is that the circuits are inefficient and “[t]hey get hot.” A lot of heat needs to be dissipated because of the amount of equipment, conversions and inefficiencies.³⁵

The risk of fire has been a problem with cellular installations. They are, essentially, electrical installations and should require compliance with strict electrical building codes. A subject matter expert on electrical safety in California and Nevada states that:

“Many people are not aware that electrical equipment, including all cell towers and 5G small cell sites, pose a fire threat that must be mitigated by a recognized electrical fire safety expert. Every electrical device is going to fail at some point. The goal is to ensure that failures do not imperil life, health and property.”³⁶

Therefore, wireless fires are electrical fires. There were three notable fires in California that were started in whole in or in part by telecommunications equipment failures or telecommunications equipment overload. The Silverado Fire in 2020 was suspected to have been caused by the failure of a telecommunications lashing wire of T-Mobile. The Woolsey Fire in 2018 was also suspected at two ignition points to have been caused by a similar failure of lashing wire of a yet undisclosed telecommunications carrier. The Woolsey Fire, described in a report for the Los Angeles County as “the deadliest and most destructive fire in California history,” encompassing 96,949 acres or 151.5 square miles, with 1,643 structures destroyed and three deaths.³⁷ The fire:

“caused residents to flee into the ocean because the three routes of exit out of the city were blocked by traffic and fire. The carrier, at this point, is

³⁴ 5G Heats Up Base Stations, <https://semiengineering.com/5g-heats-up-base-stations/>.

³⁵ 5G Heats Up Base Stations, <https://semiengineering.com/5g-heats-up-base-stations/>.

³⁶ Guest Commentary: Is 5G a Potential Fire Hazard?, Tony Simmons, P.E., *The Aspen Times*, June 13, 2021, <https://www.aspentimes.com/opinion/guest-commentary-is-5g-a-potential-fire-hazard/>.

³⁷ *City of Los Angeles, After Action Review of the Woolsey Fire Incident*, Citigate Associates, LLC, Nov. 17, 2019, at 4, <http://file.lacounty.gov/SDSInter/bos/supdocs/144968.pdf>.

unknown because the Woolsey Fire remains under criminal investigation. Over \$6 billion in damages was inflicted before the fire was finally extinguished. SCE [Southern California Edison] and the telecom that owned the lashing wire have shared responsibility for the Woolsey inferno.”³⁸

The Malibu Canyon Fire in 2007, encompassing approximately 3,836 acres:³⁹

“was caused by the failure of an SCE utility pole that was overloaded with telecom equipment owned by AT&T, Verizon, and Sprint (now T-Mobile). These four and NextG, now owned by telecom infrastructure builder Crown Castle International, Inc. [were] accused of misleading investigators, and eventually settled with the California Public Utilities Commission for over \$60 million.”⁴⁰

More recently, in April 2021, Verizon recalled 2.5 million hotspots due to fire risks. In 2021, a light pole on a high school campus in Chula Vista, California carrying an AT&T cell tower collapsed due to electrical arcing and damaged the stadium.⁴¹

“Electrical arcing is when electricity jumps from one connection to another. This flash of electricity reaches temperatures of 35,000°F ... The heat from arcing burns the insulation around the wires” and can cause a fire.⁴²

Firefighters had to wait a half hour for the power to be turned off before they could put out the fire (see footnote for footage of damage).⁴³

Cell tower fires are not limited to California, but have also occurred across the country, including in New York.⁴⁴ In 2021 in Brooklyn, the cause of fire on an apartment building rooftop was reported to be caused by an “electrical malfunction of a cell tower on the roof of a building.”⁴⁵ In Hanover, VA in 2020, a cell tower was engulfed in flames which officials believed to have been caused by electrical/mechanical issues.⁴⁶

³⁸ Guest Commentary: Is 5G a Potential Fire Hazard?, Tony Simmons, P.E., The Aspen Times, June 13, 2021, <https://www.aspentimes.com/opinion/guest-commentary-is-5g-a-potential-fire-hazard/>.

³⁹ California Public Utilities Commission, *Incident Investigation Report*, 10/21/2008, at 6, http://file.lacounty.gov/SDSInter/bos/bc/115889_ReportBack-BoardMotion60A-SessionWildfireReport.pdf.

⁴⁰ Guest Commentary: Is 5G a Potential Fire Hazard?, Tony Simmons, P.E., The Aspen Times, June 13, 2021, <https://www.aspentimes.com/opinion/guest-commentary-is-5g-a-potential-fire-hazard/>.

⁴¹ *Id.*; see also, Stadium Light Catches Fire in Chula Vista, March 10, 2021, <https://www.youtube.com/watch?v=4Ux2QLdvsw0>.

⁴² *What is Electrical Arcing and What are the Warning Signs?*, <https://www.clovelectric.com/what-is-electrical-arcing>.

⁴³ Chula Vista: Light Pole Collapses, Crushes Bleachers at Otay Ranch High School, March 10, 2021, <https://www.nbcsandiego.com/news/local/light-pole-collapses-crushes-bleachers-at-otay-ranch-high-school/2544335/>.

⁴⁴ Other states that have reported cell tower fires are: MI, VA, PA, NC, TN, OH, NJ, FL, NV, GA, IA, WA, WI, MD, OR, see <https://www.ourwebofinconvenienttruths.com/fires-and-collapses/> (which provides a compilation from around the country).

⁴⁵ *Fire on Rooftop With Cell Antennas in Brooklyn New York*, Apr 19, 2021, <https://ehtrust.org/firecell-tower-brooklyn-new-york/>.

⁴⁶ *Hanover cell tower catches fire*, NBC 12 Newsroom, June 26, 2020, <https://www.nbc12.com/2020/06/26/cell-phone-tower-hanover-catches-fire/>.

Although cell tower fires are infrequent, they are devastating when they do occur.⁴⁷ Fire has the danger of warping the tower and collapsing it down to a burning heap, that can ignite anything around it.

Fire consultant, Susan Foster (also honorary firefighter with the San Diego Fire Department) cautions that:

“electrical fires cannot be fought through conventional means until the power has been cut. Firefighters or anyone else trying to put water on an energized cell tower fire will be electrocuted ... Imagine this scenario, a cell tower catches on fire with winds gusting at 50 miles an hour. This fire is going to spread until the utility cuts the power and that can take between 10 minutes and one hour.”⁴⁸

Foster further cautions sufficient setbacks from all wireless installations so that people have time to escape. But what happens in the event of a fire? Fires can be fast and uncontrollable, and the California has already experienced its share of fires. Why would we want to add to the existing fire risks that California may already have?

Foster further cautions that, “[f]rankly, the promise of 5G is hype, and the fire danger of having cell towers close to our homes, schools and places of business can have devastating consequences,”

To help protect from similar wildfires caused by telecommunications equipment, any installation design of a cellular site would need to be regulated with at least the same rigor as applied to electrical and building codes, rather than just leaving the design to telecommunications engineers.⁴⁹

There are also cell tower collapses which pose a danger. In 2022 in Las Vegas, NV, a cell tower came crashing only feet from people’s homes.⁵⁰ In 2019 near Tucson, AZ, a 1000 foot cell tower crashed, and residents expressed concern about having no access to emergency services.⁵¹ In 2003 in Oswego, NY, a 165-foot cell tower crashed down within seconds, crushing the Fire Dept Chief’s car, missing a busy shopping area, the Fire Dept museum and the fire station.⁵²

⁴⁷ *Guest Commentary: Is 5G a Potential Fire Hazard?*, The Aspen Times, June 13, 2021, <https://www.aspentimes.com/opinion/guest-commentary-is-5g-a-potential-fire-hazard/>.

⁴⁸ *Guest Commentary: Is 5G a Potential Fire Hazard?*, The Aspen Times, June 13, 2021, <https://www.aspentimes.com/opinion/guest-commentary-is-5g-a-potential-fire-hazard/>.

⁴⁹ *Guest Commentary: Is 5G a Potential Fire Hazard?*, The Aspen Times, June 13, 2021, <https://www.aspentimes.com/opinion/guest-commentary-is-5g-a-potential-fire-hazard/>.

⁵⁰ *Cell phone tower collapses near Nellis, Tropicana, crashing down feet from businesses, homes*, April 25, 2022, <https://www.fox5vegas.com/2022/04/25/cell-phone-tower-collapses-near-nellis-tropicana-crashing-down-feet-businesses-homes/>

⁵¹ *Toppled Tower Triggers Trouble*, Oct 17, 2019, <https://www.kold.com/2019/10/18/toppled-tower-triggers-trouble/>.

⁵² *Oswego, New York Cellular Tower Crushes Chief's Vehicle*, Nov. 14, 2003, <https://www.firehouse.com/home/news/10530195/oswego-new-york-cellular-tower-crushes-chiefs-vehicle>.

E. Adverse Impacts On Flora and Fauna: Wildlife, Bees AND Trees⁵³

Additionally, given that the proposed coverage area is surrounded by farms, orchards and other agribusinesses harm to flora and fauna is an important consideration is determining whether AT&T has established that the proposed installation is the least intrusive means to fill a significant gap. Here given, the location and proximity to working orchards AT&T cannot meet this burden and the permit should be denied.

RF radiation from wireless infrastructure is hazardous for flora and fauna.⁵⁴ There is no federal agency setting safety limits for trees, birds or bees, nor is there any funded mandate to do so.⁵⁵

"FCC limits were not developed to protect flora or fauna. Wireless radiation 'safety' limits for trees, plants, birds and bees simply do not exist. No U.S. agency nor international authority with expertise in science, biology or safety has ever acted to review research and set safety limits for birds, bees, trees and wildlife."⁵⁶ Other attempts are being made to protect flora and fauna.⁵⁷

1. Bees

Bees are extremely important to the local agribusinesses and orchards located in the proposed coverage area and surrounding areas. Bees, as our primary source of pollination, are injured from RF radiation which means a decrease in pollination and, in turn, food production. A study showed that "every time a bee approaches a power line or a cell phone antenna, it becomes stressed and, therefore, its internal temperature increases and the pollination service decreases."⁵⁸ Moreover, "[h]oneybees are among the species that use magnetoreception, which is sensitive to anthropogenic electromagnetic fields, for navigation."⁵⁹

Researchers have proposed that the stress of exposure to RF radiation has weakened bee populations' resistance to other environmental stressors such as pesticides and chemicals.⁶⁰ A study performed by placing two mobile phones under a beehive showed that when the phones were turned on, within 20-40 minutes, the bees began emitting "piping" calls and squeaks announcing their start of swarming

⁵³ See <https://ehtrust.org/wp-content/uploads/Letter-National-Park-Service-Sept-2020-6.pdf>; see also, Dr. Magda Havas Letter on WiFi in Public Places, July 11, 2018, <https://ehtrust.org/wp-content/uploads/Dr-Magda-Havas-Letter-on-WiFi-in-Public-Places-.pdf>

⁵⁴ Effects of non-ionizing electromagnetic fields on flora and fauna, part 1. Rising ambient EMF levels in the environment, Levitt, Lai and Manville, March 28, 2022, <https://pubmed.ncbi.nlm.nih.gov/34047144/>.

⁵⁵ EHT Letter to US National Park Service on 5G, Cell Towers and Impacts to Pollinators, Trees and Wildlife, Sep 15, 2020, <https://ehtrust.org/ehtrust-letter-to-us-national-park-service-on-5g-cell-towers-and-impacts-to-pollinators-trees-and-wildlife/>.

⁵⁶ 5G: Environmental Effects of Birds, Bees, Trees and Climate, <https://ehtrust.org/5g-and-small-cell-environmental-effects-birds-bees-trees-and-climate/>

⁵⁷ See, e.g., *Protect Birds, Bees and Trees, Include Anthropogenic Radiofrequency Electromagnetic Radiation in Canadian Environmental Protection Act Amendments*, https://c4st.org/wp-content/uploads/docs/Studies/RF-EMR_in_CEPA_White_Paper_by_PCN_C4ST.pdf.

⁵⁸ Research confirms negative effects of power lines on bees, May 3, 2022, <https://ehtrust.org/research-confirms-negative-effects-of-power-lines-on-bees/>.

⁵⁹ Bandara, P., & Carpenter, D. O. (2018). Planetary electromagnetic pollution: It is time to assess its impact. *The Lancet. Planetary Health*, 2(12), e512–e514. [https://doi.org/10.1016/S2542-5196\(18\)30221-3](https://doi.org/10.1016/S2542-5196(18)30221-3).

⁶⁰ Id.

which means they are about to abandon the hive.⁶¹ Another study corroborated this study and found that the bees “stopped producing honey, egg production by the queen bee halved, and the size of the hive dramatically reduced.”⁶²

Another study examining how insects, including the Western honeybee, react to RF radiation exposure at frequencies from 2GHz to 120GHz, in simulations found increases in absorbed power of 3-370%.⁶³ Researchers concluded that “[t]his could lead to changes in insect behaviour, physiology and morphology over time...”⁶⁴ and that:

“enough research has been performed to indicate an urgent need to reduce electromagnetic radiation exposures to protect the bee population and in turn, protect the environment. As 5G will increase radiation exposures and use new higher frequencies shown to be highly absorbed into insects, scientists are calling for a moratorium on 5G.”⁶⁵

Andrew Goldsworthy, a biologist from the UK's Imperial College, London, explains that insects, as well as animals, use cryptochrome for navigation and:

“to sense the direction of the earth's magnetic field and their ability to do this is compromised by radiation from [cell] phones and their base stations. So basically bees do not find their way back to the hive.”⁶⁶

Goldsworthy contacted the UK communications regulator OFCOM (Office of Communications), that “a change of phone frequencies would stop the bees being confused.”⁶⁷

Bees pollinate about 90 commercial crops worldwide. Their estimated economic value in the U.S. is about \$12 billion.⁶⁸

⁶¹ *Why a mobile phone ring may make bees buzz off: Insects infuriated by handset signals*, Daily Mail, May 13 2011, <https://www.dailymail.co.uk/sciencetech/article-1385907/Why-mobile-phone-ring-make-bees-buzz-Insects-infuriated-handset-signals.html>; see also, “Cell Phones Caused Mysterious Worldwide Bee Deaths, Study Finds,” Fox News, May 13, 2011, <https://www.foxnews.com/tech/cell-phones-caused-mysterious-worldwide-bee-deaths-study-finds>.

⁶² *5G & Other Wireless Radiation Is Having A Detrimental Impact On Bees: Here's The Science*, Arjun Walia December 31, 2021, <https://thepulse.one/2021/12/31/5g-other-wireless-radiation-is-destroying-bees/>.

⁶³ *5G & Other Wireless Radiation Is Having A Detrimental Impact On Bees: Here's The Science*, Arjun Walia December 31, 2021, <https://thepulse.one/2021/12/31/5g-other-wireless-radiation-is-destroying-bees/>.

⁶⁴ *5G & Other Wireless Radiation Is Having A Detrimental Impact On Bees: Here's The Science*, Arjun Walia December 31, 2021, <https://thepulse.one/2021/12/31/5g-other-wireless-radiation-is-destroying-bees/>.

⁶⁵ *Id.*

⁶⁶ *Study links bee decline to cell phones*, Sasha Herriman, CNN, June 30, 2010, <http://edition.cnn.com/2010/WORLD/europe/06/30/bee.decline.mobile.phones/index.html>.

⁶⁷ *Study links bee decline to cell phones*, Sasha Herriman, CNN, June 30, 2010, <http://edition.cnn.com/2010/WORLD/europe/06/30/bee.decline.mobile.phones/index.html>.

⁶⁸ <https://obamawhitehouse.archives.gov/the-press-office/2014/06/20/fact-sheet-economic-challenge-posed-declining-pollinator-populations>

A review of 45 peer-reviewed scientific studies found physiological and morphological changes in plants, such as maize, roselle, pea, fenugreek, duckweeds, tomato, onions and mungbean plants, which appeared to be very sensitive to RF radiation.⁶⁹ This can have repercussions for our food supply.

2. Trees

Similarly, the proposed coverage and surrounding areas are filled with almond, walnut and fruit trees. It has been shown that trees are damaged by RF radiation from mobile phone base stations, with damage starting on one side and then “extending to the whole tree over time.”⁷⁰ Tree damage was found with chronic exposure to RF radiation.⁷¹ Visual observations of tree damage include:

“irregular leaf coloration, leaf wilt, leaf loss, temporal and spatial irregularities in the seasonal leaf color change and leaf loss, fewer shoots, greatly elongated shoots with foliage at the tip and bare patches farther down the shoot, changes in branching patterns, and dead limbs and branches. The damage is most prominent at the edge on one side of the crown. This area is referred to as the starting point of damage. From there, the damage decreases in its intensity toward the opposite side of the crown that may be less affected or not at all. The crown volume, which is damaged within this geometric space, is referred to as the damage area. It will continue to develop further over the course of several growing seasons.”⁷²

Example of a cell antenna with adverse impacts on a tree:

Red Oak Tree

August 2013⁷³



M. Halgamug, Sept 20,

⁶⁹ Review: Weak radiofrequency radiation and health effects, 2016, <https://pubmed.ncbi.nlm.nih.gov/27111111/>

⁷⁰ Radiofrequency radiation and health effects, 2016, <https://pubmed.ncbi.nlm.nih.gov/27111111/>

⁷¹ Tree Damage from Chronic Radiofrequency Radiation Exposure, 2011, <https://ehpnet1.niehs.nih.gov/docs/2011/02-18.pdf>

⁷² Tree damage caused by mobile phone base stations; An observation guide, Helmut Breunig, March 2017, https://kompetenzinitiative.com/wp-content/uploads/2019/08/2017_Observation_Guide_ENG_FINAL_RED.pdf

⁷³ Id at 6.



Same Red Oak Tree

August 2015⁷⁴

Sparse foliage on the left side facing the cell antenna
Photo credits:

Photos and RF measurements by Cornelia Waldmann
Selsam

Additional photos by Alfonso Balmori, Helmut Breunig,
Örjan Hallberg,

Volker Schorpp and Monika Schuberth Brehm

The proposed project location contains several orchards, farms and agribusinesses that are important to the local agricultural community. With the advent of wireless infrastructure installations in this area, many trees are likely to be damaged and bees harmed. Based on this this danger, AT&T's proposed location is not the least intrusive to fill the alleged significant gap.

Conclusion

As this appeal has demonstrated, AT&T has not met its burden that a significant gap in coverage exists or that it identified the least intrusive means to fill the alleged significant gap. Therefore, this appeal should be granted, and AT&T's permit should be denied.

⁷⁴ Id. at 6.

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Attachment B **Site Plan**

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Community Development Department

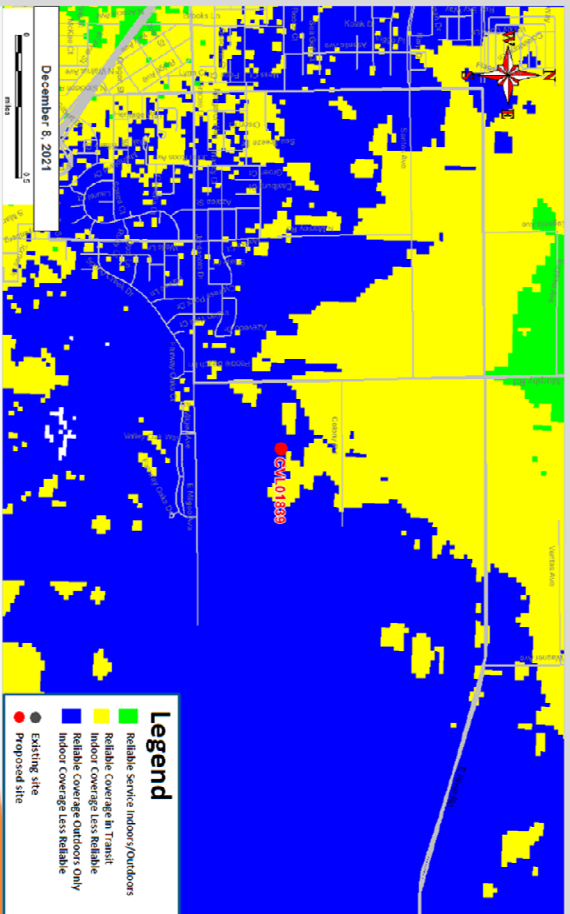
Planning · Building · Code Enforcement · Fire Prevention · GIS

Attachment C **Coverage Map**

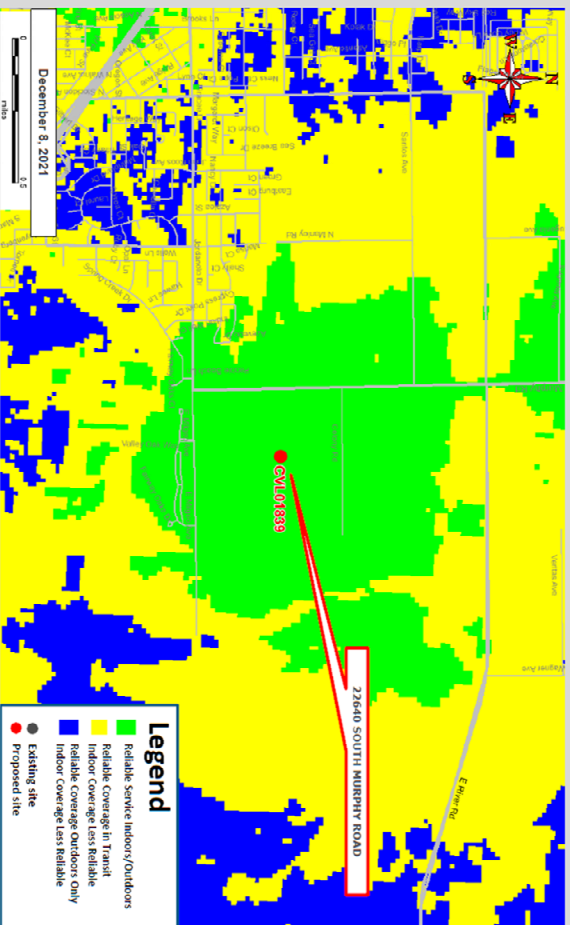
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Coverage Maps

Existing Coverage



Proposed Coverage



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Attachment D **Agency Response Letters**

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September 9, 2022

M E M O R A N D U M

TO: Community Development Department
CONTACT PERSON: Stephanie Stowers

FROM: Christopher Heylin, Development Services Engineer *CH*
Development Services Division

SUBJECT: PA-2000214; A Site Approval application for a 125 foot tall, wireless telecommunication monopole tower to be located within a 1,600 square foot lease area with associated equipment and backup generator; located on the southeast corner of South Murphy Road and East Colony Road, Escalon. (Supervisory District 4)

OWNER: Kamps Property Management, LLC.

APPLICANT: New Cingular Wireless

ADDRESS: 22640 S. Murphy Road, Escalon

APN: 245-190-45

INFORMATION:

The site is not currently located within a Federal Emergency Management Agency Designated Flood Hazard Area.

Murphy Road has an existing right-of-way of 60 feet and a planned right-of-way of 84 feet.

Colony Road has an existing right-of-way of 30 feet and a planned right-of-way of 50 feet.

RECOMMENDATIONS:

- 1) An encroachment permit shall be required for all work within road right-of-way. (Note: Driveway encroachment permits are for flatwork only – all vertical features, including but not limited to fences, walls, private light standards, rocks, landscaping and cobbles are not allowed in the right-of-way.) (Development Title Sections 9-1145.4 and 9-1145.5)
- 2) Prior to issuance of the occupancy permit, the driveway approach shall be improved in accordance with the requirements of San Joaquin County Improvement Standards Drawing No. R-17. (Development Title Section 9-1145.5)

PA-2000214 (SA)

- 3) The Traffic Impact Mitigation Fee shall be required for this application. The fee is due and payable at the time of building permit application. The fee shall be automatically adjusted July 1 of each year by the Engineering Construction Cost Index as published by the Engineering News Record. (Resolution R-00-433)
- 4) The Regional Transportation Impact Fee shall be required for this application. The fee is due and payable at the time of building permit application. The fee will be based on the current schedule at the time of payment. (Resolution R-06-38)
- 5) The developer shall provide drainage facilities in accordance with the San Joaquin County Development Standards. Retention basins shall be fenced with six (6) foot high chain link fence or equal when the maximum design depth is 18 inches or more. Required retention basin capacity shall be calculated and submitted along with a drainage plan for review and approval, prior to release of building permit. (Development Title Section 9-1135)

CH:DS



Environmental Health Department

Jasjit Kang, REHS, Director

Muniappa Naidu, REHS, Assistant Director

PROGRAM COORDINATORS

Robert McClellan, REHS

Jeff Carruesco, REHS, RDI

Willy Ng, REHS


Steven Shih, REHS

Michelle Henry, REHS

Elena Manzo, REHS

15 September 2022

To: San Joaquin County Community Development Department
Attention: Stephanie Stowers

From: Aaron Gooderham (209) 616-3062
Registered Environmental Health Specialist 

RE: **PA-2200214 (SA), Early Consultation, SU0013963**
22640 S. Murphy Rd., Escalon

The following requirements have been identified as pertinent to this project. Other requirements may also apply. These requirements cannot be modified.

1. Any geotechnical drilling shall be conducted under permit and inspection by The Environmental Health Department (San Joaquin County Development Title, Section 9-1115.3 and 9-1115.6).
2. Before any hazardous materials/waste can be stored or used onsite, the owner/operator must report the use or storage of these hazardous materials to the California Environmental Reporting System (CERS) at cers.calepa.ca.gov/ and comply with the laws and regulations for the programs listed below (based on quantity of hazardous material in some cases). The applicant may contact the Program Coordinator of the CUPA program, Elena Manzo (209) 953-7699, with any questions.
 - a. Any amount but not limited to the following hazardous waste; hazardous material spills, used oil, used oil filters, used oil-contaminated absorbent/debris, waste antifreeze, used batteries or other universal waste, etc. – Hazardous Waste Program (Health & Safety Code (HSC) Sections 25404 & 25180 et sec.)
 - b. Onsite treatment of hazardous waste – Hazardous Waste Treatment Tiered Permitting Program (HSC Sections 25404 & 25200 et sec. & California Code of Regulations (CCR), Title 22, Section 67450.1 et sec.)
 - c. Reportable quantities of hazardous materials-reportable quantities are 55 gallons or more of liquids, 500 pounds for solids, or 200 cubic feet for compressed gases, with some exceptions. Carbon dioxide is a regulated substance and is required to be reported as a hazardous material if storing 1,200 cubic feet (137 pounds) or more onsite in San Joaquin County – Hazardous Materials Business Plan Program (HSC Sections 25508 & 25500 et sec.)
 - d. Any amount of hazardous material stored in an Underground Storage Tank – Underground Storage Tank Program (HSC Sections 25286 & 25280 et sec.)
 - i. If an underground storage tank (UST) system will be installed, a permit is required to be submitted to, and approved by, the San Joaquin County

Environmental Health Department (EHD) before any UST installation work can begin.

- ii. Additionally, an EHD UST permit to operate is required once the approved UST system is installed.
- e. Storage of at least 1,320 gallons of petroleum aboveground or any amount of petroleum stored below grade in a vault – Aboveground Petroleum Storage Program (HSC Sections 25270.6 & 25270 et sec.)
 - i. Spill Prevention, Countermeasures and Control (SPCC) Plan requirement
- f. Threshold quantities of regulated substances stored onsite - California Accidental Release Prevention (CalARP) Program (Title 19, Section 2735.4 & HSC Section 25531 et sec.)
 - i. Risk Management Plan requirement for covered processes



S J C O G, Inc.

555 East Weber Avenue • Stockton, CA 95202 • (209) 235-0600 • FAX (209) 235-0438

San Joaquin County Multi-Species Habitat Conservation & Open Space Plan (SJMSCP)

**SJMSCP RESPONSE TO LOCAL JURISDICTION (RTL)
ADVISORY AGENCY NOTICE TO SJCOG, Inc.**

To: Kelsey Gunter, San Joaquin County, Community Development Department
From: Laurel Boyd, SJCOG, Inc.
Date: March 22, 2021

Local Jurisdiction Project Title: PA-2000214 (SA)

Assessor Parcel Number(s): 245-190-45

Local Jurisdiction Project Number: PA-2000214 (SA)

Total Acres to be converted from Open Space Use: Unknown

Habitat Types to be Disturbed: Multi-Purpose Open Space Habitat Land

Species Impact Findings: Findings to be determined by SJMSCP biologist.

Dear Ms. Gunter:

SJCOG, Inc. has reviewed the application referral for PA-2000214 (SA). This project consists of a Site Approval application for an unmanned, freestanding, 134-foot high, wireless telecommunications pole with associated equipment including a backup generator, located within a 1,600 square foot lease space. Access to the site will be from S. Murphy Road. The project location is on the southeast corner of S. Murphy Road and E. Colony Road, Escalon (APN/Address: 245-190-45/22640 S. Murphy Road, Escalon).

San Joaquin County is a signatory to San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Participation in the SJMSCP satisfies requirements of both the state and federal endangered species acts, and ensures that the impacts are mitigated below a level of significance in compliance with the California Environmental Quality Act (CEQA). The LOCAL JURISDICTION retains responsibility for ensuring that the appropriate Incidental Take Minimization Measure are properly implemented and monitored and that appropriate fees are paid in compliance with the SJMSCP. Although participation in the SJMSCP is voluntary, Local Jurisdiction/Lead Agencies should be aware that if project applicants choose against participating in the SJMSCP, they will be required to provide alternative mitigation in an amount and kind equal to that provided in the SJMSCP.

This project is subject to the SJMSCP and is located within the unmapped land use area. Per requirements of the SJMSCP, unmapped projects are subject to case-by-case review. This can be a 90 day process and it is recommended that the project applicant contact SJMSCP staff as early as possible. It is also recommended that the project applicant obtain an information package. <http://www.sjco.org>

If this project is approved by the Habitat Technical Advisory Committee and the SJCOG Inc. Board, the following process must occur to participate in the SJMSCP:

- Schedule a SJMSCP Biologist to perform a pre-construction survey ***prior to any ground disturbance***
- SJMSCP Incidental take Minimization Measures and mitigation requirement:
 1. Incidental Take Minimization Measures (ITMMs) will be issued to the project and must be signed by the project applicant prior to any ground disturbance but no later than six (6) months from receipt of the ITMMs. If ITMMs are not signed within six months, the applicant must reapply for SJMSCP Coverage. Upon receipt of signed ITMMs from project applicant, SJCOG, Inc. staff will sign the ITMMs. This is the effective date of the ITMMs.
 2. Under no circumstance shall ground disturbance occur without compliance and satisfaction of the ITMMs.
 3. Upon issuance of fully executed ITMMs and prior to any ground disturbance, the project applicant must:
 - a. Post a bond for payment of the applicable SJMSCP fee covering the entirety of the project acreage being covered (the bond should be valid for no longer than a 6 month period); or
 - b. Pay the appropriate SJMSCP fee for the entirety of the project acreage being covered; or
 - c. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
 - d. Purchase approved mitigation bank credits.
 4. Within 6 months from the effective date of the ITMMs or issuance of a building permit, whichever occurs first, the project applicant must:

2 | S J C O G , I n c .

- a. Pay the appropriate SJMSCP for the entirety of the project acreage being covered; or
- b. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
- c. Purchase approved mitigation bank credits.

Failure to satisfy the obligations of the mitigation fee shall subject the bond to be called.

- Receive your Certificate of Payment and release the required permit

It should be noted that if this project has any potential impacts to waters of the United States [pursuant to Section 404 Clean Water Act], it would require the project to seek voluntary coverage through the unmapped process under the SJMSCP which could take up to 90 days. It may be prudent to obtain a preliminary wetlands map from a qualified consultant. If waters of the United States are confirmed on the project site, the Corps and the Regional Water Quality Control Board (RWQCB) would have regulatory authority over those mapped areas [pursuant to Section 404 and 401 of the Clean Water Act respectively] and permits would be required from each of these resource agencies prior to grading the project site.

If you have any questions, please call (209) 235-0600.



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San Joaquin County Multi-Species Habitat Conservation & Open Space Plan

555 East Weber Avenue • Stockton, CA 95202 • (209) 235-0600 • FAX (209) 235-0438

SJMSCP HOLD

TO: Local Jurisdiction: Community Development Department, Planning Department, Building Department, Engineering Department, Survey Department, Transportation Department,
Other:

FROM: Laurel Boyd, SJCOG, Inc.

**DO NOT AUTHORIZE SITE DISTURBANCE
DO NOT ISSUE A BUILDING PERMIT
DO NOT ISSUE _____ FOR THIS PROJECT**

The landowner/developer for this site has requested coverage pursuant to the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). In accordance with that agreement, the Applicant has agreed to:

- 1) SJMSCP Incidental Take Minimization Measures and mitigation requirement:
 1. Incidental Take Minimization Measures (ITMMs) will be issued to the project and must be signed by the project applicant prior to any ground disturbance but no later than six (6) months from receipt of the ITMMs. If ITMMs are not signed within six months, the applicant must reapply for SJMSCP Coverage. Upon receipt of signed ITMMs from project applicant, SJCOG, Inc. staff will sign the ITMMs. This is the effective date of the ITMMs.
 2. Under no circumstance shall ground disturbance occur without compliance and satisfaction of the ITMMs.
 3. Upon issuance of fully executed ITMMs and prior to any ground disturbance, the project applicant must:
 - a. Post a bond for payment of the applicable SJMSCP fee covering the entirety of the project acreage being covered (the bond should be valid for no longer than a 6 month period); or
 - b. Pay the appropriate SJMSCP fee for the entirety of the project acreage being covered; or
 - c. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
 - d. Purchase approved mitigation bank credits.
 4. Within 6 months from the effective date of the ITMMs or issuance of a building permit, whichever occurs first, the project applicant must:
 - a. Pay the appropriate SJMSCP for the entirety of the project acreage being covered; or
 - b. Dedicate land in-lieu of fees, either as conservation easements or fee title; or
 - c. Purchase approved mitigation bank credits.
- Failure to satisfy the obligations of the mitigation fee shall subject the bond to be called.

Project Title: PA-2000214 (SA)

Landowner: Kamps Property Management, LLC

Applicant: New Cingular Wireless

Assessor Parcel #: 245-190-45

T _____, R _____, Section(s): _____

Local Jurisdiction Contact: Kelsey Gunter

The LOCAL JURISDICTION retains responsibility for ensuring that the appropriate Incidental Take Minimization Measures are properly implemented and monitored and that appropriate fees are paid in compliance with the SJMSCP.



SOUTH SAN JOAQUIN
IRRIGATION DISTRICT

April 5, 2021

San Joaquin County
Community Development Dept.
1810 E. Hazelton Ave.
Stockton, CA 95205

Attn: Kelsey Gunter

Subject: PA-2000214 (SA)
Kamps Property Management, LLC
APN: 245-190-45

Dear: Ms. Gunter:

The South San Joaquin Irrigation District ("SSJID") has reviewed the application named above and requests that the following conditions of approval be adopted for this development:

- Based upon review of the site plan, it appears that there is an SSJID irrigation pipeline, Lateral U88dd, located very near the proposed project. As such, we are requesting that improvement plans be submitted to the District which provides specific details for proposed improvements which may affect District facilities and operations. This plan must be reviewed and approved by the District Engineering Department to determine the extent of any necessary improvements to District facilities in accordance with District policy. No building shall be allowed within District easement.
- Any proposed encroachment within the District's easement is subject to review and approval of an encroachment permit application.

*P.O. Box 747, Ripon, CA 95366-0747 (Mailing)
11011 E. Highway 120, Manteca, CA 95336-9750
(209) 249-4600*

If you have any questions, please contact me in the Engineering Department at (209) 249-4620.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Killingsworth".

Forrest Killingsworth
Engineering Department Manager

*P.O. Box 747, Ripon, CA 95366-0747 (Mailing)
11011 E. Highway 120, Manteca, CA 95336-9750
(209) 249-4600*



SAN JOAQUIN FARM BUREAU FEDERATION

MEETING TODAY'S CHALLENGES / PLANNING FOR TOMORROW

March 31, 2021

San Joaquin County Community Development Department
Development Services Division
Attn: Kelsey Gunter
1810 E. Hazelton Avenue
Stockton, CA 95205

RE: PA- 2000214 (SA)

Dear Ms. Gunter;

The San Joaquin Farm Bureau Federation is a private, not for profit, volunteer organization. The Farm Bureau is San Joaquin County's oldest agricultural organization, dedicated to the promotion and advancement of agriculture for over one hundred years. We would like to express our concern regarding this application, a site approval to construct a new 134 foot telecommunications pole with associated ground equipment.

Aerial sprayers provide many valuable services to both the agricultural industry and to the community at large. In agriculture, we use crop dusters to eliminate crop damaging pests and the County's Mosquito and Vector Control District also regularly uses aerial spraying for mosquito abatement purposes to control disease carrying insects for the public. Pursuant to the San Joaquin County Development Title¹, the proposed project shall not significantly displace or impair agricultural operations. Here, we have reservations about this project in a highly agricultural area that regularly utilizes the services of aerial sprayers. Following best agricultural practices, crop dusters fly lower than regular air traffic to maximize their efficiency and only spray the crop, eliminating drift to the greatest extent possible. Thus, we must make certain that the telecommunications pole is clearly marked and maintained to ensure adequate visibility to protect the aerial sprayers, so we can maintain the existing agricultural operations in the region.

As a condition of approval for this application, we recommend the county require that the applicant follow the FAA painting and lighting recommendations for structures that may pose a hazard to air navigation. The unique circumstances of the project and the site warrant such consideration and it would best serve the agricultural and public safety interests at stake. If you have any further questions, please do not hesitate to contact the Farm Bureau at (209) 931-4931.

Sincerely,

David Strecker
San Joaquin Farm Bureau President

¹ SJC Development Title 9-1065.4(e)

Gunter, Kelsey [CDD]

From: Anna Cheng <acheng@auburnrancheria.com>
Sent: Tuesday, April 6, 2021 9:58 AM
To: Gunter, Kelsey [CDD]
Cc: Anna Starkey
Subject: PA-2000214 (SA)

CAUTION: This email is originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Gunter,

On behalf of the United Auburn Indian Community's Tribal Historic Preservation Department, thank you for the notification and opportunity to consult for the above referenced project. We have reviewed the project location and determined that it falls outside of the UAIC's consultation area. Therefore, we will not be commenting on the project. Thank you.

Best,
Anna Cheng

Nothing in this e-mail is intended to constitute an electronic signature for purposes of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15, U.S.C. §§ 7001 to 7006 or the Uniform Electronic Transactions Act of any state or the federal government unless a specific statement to the contrary is included in this e-mail.

Galloway, Deborah [CDD]

From: Ivan Senock <ivan@bvtribe.com>
Sent: Monday, March 22, 2021 12:31 PM
To: Galloway, Deborah [CDD]
Subject: RE: PA-2000214 Site Approval: Referral, Staff Review with Notice - Neighborhood

CAUTION: This email is originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Debbie Galloway,

I write on behalf of the Buena Vista Rancheria (BVR) of Me- Wuk Indians, Ione, CA. regarding the notification received by this office March 18, 2021.

The notification references PA-2000214(SA).

After review of the notification and examination of the property using the Google Earth mapping application, it is determined BVR has no objection to commencement of the project.

If Tribal Cultural Resources (TCR) should be inadvertently encountered, during the project, Buena Vista Rancheria requests additional notification so steps may be taken to protect and preserve them.

Please refer to identification number BVR-2021-03-016 in any correspondences concerning this project.

Thank you for providing us with this notice and the opportunity to comment

Respectfully,

Ivan R. Senock
Tribal Historic Preservation Officer (THPO)
Buena Vista Rancheria of Me-Wuk Indians (Tribe)
1418 20th Street, Suite #200
Sacramento, CA 95811
ivan@bvtribe.com
Office: (916) 941-0011 ext. 255
Cell: (530) 588-1410

From: Galloway, Deborah [CDD] <dgalloway@sjgov.org>
Sent: Thursday, March 18, 2021 10:53 AM
To: Gunter, Kelsey [CDD] <kgunter@sjgov.org>; Martorella, Dominique [CDD] <dmartorella@sjgov.org>; Asio, Allen [CDD] <aasio@sjgov.org>
Cc: Fine, Mark [CDD] <mfine@sjgov.org>; Clayton, Jay [CDD] <jayclayton@sjgov.org>; ehlanduse [EHD] <ehlanduse@sjgov.org>; Butler, Steve [CDD] <sbutler@sjgov.org>; Guerrero, Delia [PW] <Dguerrero@sjgov.org>; Heylin, Christopher [PW] <cheylin@sjgov.org>; Warmerdam, Denise [BOS] <dwarmerdam@sjgov.org>; Laurel Boyd <boyd@sjgov.org>; ALUC@sjgov.org; bruceb@sjfb.org; staff@sjfb.org; Ivan Senock <ivan@bvtribe.com>; Mike DeSpain <mike@buenavistatribe.com>
Subject: PA-2000214 Site Approval: Referral, Staff Review with Notice - Neighborhood

Please see attached documents regarding project PA-2000214 (SA). A copy has been uploaded to Permits Plus and the CDD website.

Thank you,

Debbie Galloway

Office Assistant Specialist

Community Development Department

Main Office: (209) 468-3121

Direct: (209) 468-0229

Fax: (209) 468-3163

Please also visit us On-line: <https://www.sigov.org/commdev>



SAN JOAQUIN
— COUNTY —
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Attachment E **Previously Approved Findings for** **Site Approval**

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PREVIOUSLY APPROVED FINDINGS FOR SITE APPROVAL

PA-2000214

KAMPS PROPERTY MANAGEMENT, LLC / NEW CINGULAR WIRELESS

1. The proposed use is consistent with the goals, policies, standards, and maps of the General Plan, any applicable Master Plan, Specific Plan, and Special Purpose Plan, and any other applicable plan adopted by the County.
 - **This finding can be made because the proposed use of the telecommunications tower is located in the AU-20 (Agriculture Urban Reserve – 20-acre minimum) zone, and the Communications Services – Type II use type may be conditionally permitted in this zone with an approved Site Approval application. The project site has a General Plan designation of A/G (General Agriculture), and the AU-20 zone is an implementing zone for this designation. The proposed tower is consistent with the goals, policies, standards, and maps of the General Plan, and there are no Master Plans or Special Purpose Plans applicable to this site.**
2. Adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, and the proposed improvements are properly related to existing and proposed roadways.
 - **This finding can be made because there are no new utility improvements required. The proposed project includes a new tower, and is an unmanned facility and will not impact existing public utilities. This project will not require the use of public water, sewer, or storm drainage, nor are private services required for this use. The project site will continue to be accessed from S. Murphy Road.**
3. The site is physically suitable for the type of development and for the intensity of development.
 - **This finding can be made because the 28.74-acre parcel is of adequate size and shape to accommodate the proposed use, building coverage, setbacks, and other requirements of the Development Title. The parcel can accommodate the use of the telecommunications facility and the associated ground equipment within the existing lease area.**
4. Issuance of the permit will not be significantly detrimental to the public health, safety, or welfare or be injurious to the property or improvements of adjacent properties.
 - **This finding can be made because it was determined that the project will not be detrimental to the Public Health. A Notice of Exemption from CEQA (California Environmental Quality Act) will be filed. The telecommunications tower must comply with Federal Communications Commission regulations regarding radio frequency emissions.**
5. The use is compatible with adjoining land uses.
 - **This finding can be made because the proposed use may be conditionally permitted in the AU-20 zone with an approved Site Approval application. The proposed use will not interfere with nor alter the current land uses on adjoining properties. The adjacent surrounding parcels are primarily agricultural with scattered residences.**

Pursuant to the Telecommunications Act of 1996 and T-Mobile USA Inc. v. City of Anacortes, 572 F.3d 987, and a related line of cases, the County shall not deny an application for a wireless communication facility such as a cell tower if the applicant has shown that there is a significant gap in cellular coverage and that the proposed location is the least intrusive means to close that gap unless the County can show the “existence of a potentially available and technologically feasible alternative to the proposed location.” Here, the Applicant has demonstrated a significant gap in cellular coverage for the community around the proposed tower and that the proposed tower is the least intrusive means to close that gap. The County has not found a feasible alternative site or technology to cover the gap.

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SAN JOAQUIN
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Attachment F Previously Approved Conditions of Approval

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REVISED CONDITIONS OF APPROVAL

PA-2000214

Kamps Property Management, LLC / New Cingular Wireless

The Planning Commission denied the appeal of Site Approval Application No. PA-2000214 and upheld the Community Development Department's approval on . The effective date of approval is . This approval will expire on , which is 36 months from the effective date of approval, unless (1) all Conditions of Approval have been complied with, (2) all necessary building permits have been issued and remain in force, and (3) all necessary permits from other agencies have been issued and remain in force.

Unless otherwise specified, all Conditions of Approval and ordinance requirements shall be fulfilled prior to the establishment of the use and the issuance of any building permits. Those Conditions followed by a Section Number have been identified as ordinance requirements pertinent to this application. Ordinance requirements cannot be modified, and other ordinance requirements may apply.

1. COMMUNITY DEVELOPMENT DEPARTMENT (Contact: [209] 468-3121)

- a. **BUILDING PERMIT:** Submit an "APPLICATION-COMMERCIAL BUILDING PERMIT". The Site Plan required as a part of the building permit must be prepared by a registered civil engineer or licensed architect. This Plan must show drainage, driveway access details including gates, on-site parking, landscaping, signs, existing and proposed utility services, and grading (refer to the "SITE PLAN CHECK LIST" for details). Foundation and soils investigation shall be conducted in conformance with Chapter 18 of the California Building Code at the time of permit application. A fee is required for the Site Plan review. (Development Title Section 9-884)
- b. **APPROVED USE:** This approval is for a 125-foot-tall wireless telecommunication monopole tower to be located within a 1,600-square-foot lease area with associate equipment and backup generator as shown on the revised site plan dated September 7, 2022. (Use Type: Communication Services – Type II)
- c. **CAPITAL FACILITY FEE:** This project may be subject to the Capital Facility Fee. If the Capital Facility Fee is applicable, the County shall collect the fees before the issuance of any building permits. (Development Title Section 9-1245.2)
- d. **SETBACKS:** The structure shall comply with the following setback requirements:
 1. The proposed tower shall be located a distance equal to at least the height of the said structure from residential structures on adjoining properties. (Development Title Section 9-1065.4[d])
- e. **MAINTENANCE OF FACILITIES:** All freestanding structures, antennas, and supporting equipment associated with wireless telecommunication shall be maintained in good condition by the provider of the telecommunication facility and, whenever necessary, repaired or replaced. (Development Title Section 9-1065.7)
- f. **REMOVAL OF FACILITIES:**
 1. Freestanding structures, antennas, and supporting equipment associated with wireless telecommunication shall be removed by the provider of such facilities and the site restored to its pre-construction state if said facilities have not been operational or used for a period of 6 consecutive months. Removal and site restoration shall be completed within 90 days of the end of said 6-month period. (Development Title Section 9-1065.8)
 2. Not less than ten years following the effective date of this approval, AT&T shall remove the wireless telecommunications facility if the following occurs: (1) adoption by Ripon City Council of a resolution pursuant to Ripon Municipal Code Section 16.48.030, as it is currently drafted or amended, to annex the subject property or any property within 500 feet of the wireless telecommunications facility; (2) the subject property is designated as a residential zoning district

pursuant to Ripon Municipal Code Chapter 16.12 as it is currently drafted or amended; and (3) a conflict exists between the residential zoning district and the continued existence of AT&T's wireless telecommunications facility; then (4) AT&T shall remove the wireless telecommunications facility within thirty-six months of received written notice of such a conflict.

2. DEPARTMENT OF PUBLIC WORKS (Contact: [209] 468-3000, see memo dated September 9, 2022)
3. ENVIRONMENTAL HEALTH DEPARTMENT (Contact: [209] 468-3436, see memo dated September 15, 2022)
4. SAN JOAQUIN COUNCIL OF GOVERNMENTS (Contact: [209] 235-0600, see memo dated March 22, 2021)

FOR NOTES AND INFORMATION ONLY:

See South San Joaquin Irrigation District letter dated April 5, 2021.

See San Joaquin Farm Bureau Federation letter dated March 31, 2021.

See Pacific Gas and Electric Company letter dated October 7, 2022.

See Buena Vista Rancheria of Me-Wuk Indians email dated October 11, 2022.