Los Angeles County
Department of Regional Planning

Planning for the Challenges Ahead

Richard J. Bruckner
Director

November 14, 2016

TO: Susan Tae, AICP
Hearing Officer

FROM: Carl Nadela, AICP
Zoning Permits East Section

SUBJECT: Project No. R2015-02353-(5)
Conditional Use Permit No. 201500095
HO Meeting: November 15, 2016
Agenda Item: 4

The above-mentioned item is a request for a Conditional Use Permit to authorize a new wireless telecommunication facility disguised as a eucalyptus tree located in the parking lot of an existing church. This item was first scheduled for public hearing on November 17, 2015 and was subsequently continued to March 15, 2016 and June 21, 2016, without the public hearing being opened. The public hearing was then opened on June 21, 2016 and subsequently continued to September 6, November 1 and November 15, 2016.

On November 7, 2016, staff sent a memo to the Hearing Officer with proposed Findings of Denial, as directed during the November 1, 2016 public hearing. In relation to this, please find attached additional correspondence regarding the project on behalf of the applicant dated November 11, 2016.

If you need further information, please contact Carl Nadela at (213) 974-6435 or cnadela@planning.lacounty.gov. Department office hours are Monday through Thursday from 7:00 a.m. to 6:00 p.m. The Department is closed on Fridays.

SUGGESTED DENIAL MOTION:

I, THE HEARING OFFICER, CLOSE THE PUBLIC HEARING AND DENY CONDITIONAL USE PERMIT NUMBER 201500095 PURSUANT TO THE ATTACHED FINDINGS.

MACKENZIE & ALBRITTON LLP
220 SANSOME STREET, 14TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE 415/288-4000
FACSIMILE 415/288-4010

November 11, 2016

VIA EMAIL

Susan Tae
Hearing Officer
Department of Regional Planning
County of Los Angeles
320 West Temple Street
Los Angeles, California 90012

Re: Verizon Wireless Application, Project No. R2015-02353-(5)
Conditional Use Permit No. 201500095
Camouflaged Telecommunication Facility, 2949 Lincoln Avenue
Hearing Officer Agenda, November 15, 2016

Ms. Tae:

We write on behalf of Verizon Wireless in support of its application for a camouflaged wireless telecommunication facility at 2949 Lincoln Avenue in the Altadena area (the "Proposed Facility"). As verified in the draft resolution to be considered at your hearing on November 15, 2016, (the "Draft Resolution"), the Proposed Facility meets all four findings of approval required for a conditional use permit. The two additional findings for denial are neither grounded in requirements of the Los Angeles County Code of Ordinances (the "Code") nor are they supported by substantial evidence. As we explain below, Verizon Wireless has provided ample evidence to show that Proposed Facility meets all County standards for wireless facilities, including Subdivision & Zoning Ordinance Policy No. 01-2010 (the "Wireless Policy"). We have also attached a letter from a Verizon Wireless Marketing Director that provides evidence of 566 Altadena area residents who sent text messages of support for improved Verizon Wireless service in the area.

In addition, denial of the Proposed Facility would violate the federal Telecommunications Act. This is because denial would constitute a prohibition of service as the Proposed Facility will fill a significant gap in Verizon Wireless service and there is no less intrusive feasible alternative. Further, denial would constitute unreasonable discrimination among wireless carriers as there is a similarly-situated camouflaged wireless facility on the same property. We strongly urge you to remove Findings E and F from the Draft Resolution and to adopt Findings A through D for approval of the Proposed Facility.

I. The Project

The Proposed Facility has been thoughtfully designed and redesigned to minimize impacts on the surrounding community. Verizon Wireless proposes to construct a 49 foot tower disguised as a eucalyptus tree with antennas mounted at a centerline of 41 feet, the minimum height necessary to serve the significant gap in service. Faux foliage will extend beyond and above antennas to provide camouflage. The treepole will be placed adjacent to broadleaf street trees to the south and palm trees to the east that provide additional screening from public view. A 53 foot Sprint wireless facility camouflaged as a palm tree is located approximately 70 feet west of the Proposed Facility. The treepole base will be enclosed within an approximately 290 square foot equipment lease area surrounded by a six-foot wrought iron fence. The lease area will also contain radio cabinets and a standby generator to provide continued service in case of emergency. Utilities serving the Proposed Facility will be placed underground.

II. Federal Law Requires that Denial Be Supported by Substantial Evidence.

Under federal law, the County has the burden of proof to substantiate denial of a wireless facility application. While state and local governments retain their traditional zoning authority to regulate the placement and modification of wireless facilities, the federal Telecommunications Act placed several limitations on such authority. Among these limitations is the requirement that any decision to deny a request to install or modify a personal wireless service facility "shall be in writing and supported by substantial evidence contained in a written record." 47 U.S.C. Section 332 (c)(7)(B)(iii). As interpreted under controlling federal court decisions, the "substantial evidence" requirement means that a local government's decision to deny a WCF application must be "authorized by applicable local regulations and supported by a reasonable amount of evidence (i.e., more than a 'scintilla' but not necessarily a preponderance)." *Metro PCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 725 (9th Cir. 2005). In other words, a local government must have specific reasons that are both consistent with local regulations and supported by substantial evidence in the record to deny a wireless facility permit.

Findings E and F of the Draft Resolution dispute Verizon Wireless's site selection process, but these findings for denial are not based on Code requirements, rather, they allude to Wireless Policy submittal requirements. Finding E claims that Verizon Wireless Policy has not conducted a good faith effort to collocate on existing wireless facilities within one-quarter mile. The only such facility is the Sprint facility on the subject property, which is infeasible for collocation as described in the *Statement of Verizon Wireless Radio Frequency Engineer Amanda Lam* (the "RF Engineer's Statement"). The RF Engineer's Statement provides evidence that the available antenna centerline on the Sprint facility is too low to serve Verizon Wireless's significant gap due to blockage of signal by terrain and structures, while placing antennas above Sprint's

antennas would result in interference with the existing Verizon Wireless network. The County has not provided substantial evidence to contradict the conclusion of Verizon Wireless's engineer that the Sprint facility is infeasible for collocation.

Finding F of the Draft Resolution claims that Verizon Wireless has not provided sufficient documentation that the Proposed Facility is the least intrusive site to serve the significant gap. Verizon Wireless has submitted an Alternatives Analysis that reviews eight locations in the vicinity, providing further evidence of infeasibility of collocating with the Sprint facility and concluding that the Proposed Facility is the least intrusive feasible alternative. The County has not provided substantial evidence of any viable alternatives in the vicinity that would contradict Verizon Wireless's conclusion.

In sum, the County has not provided any evidence, let alone the substantial evidence required under federal law, to support denial of the Proposed Facility under Findings E and F of the Draft Resolution. In contrast, Verizon Wireless has provided ample substantial evidence, including photosimulations, documentation of need, text messages of support from area residents and analysis of alternatives. This substantial evidence supports Draft Resolution Findings A through D for approval of the Proposed Facility, consistent with the four findings for approval of a conditional use permit in Code Section 22.56.090.

III. <u>Approval is Required in Order to Avoid Unlawful Prohibition of Service.</u>

A local government's decision must not "prohibit or have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. §332(c)(7)(B)(i)(II)). A local government violates the "effective prohibition" clause of the TCA if it prevents a wireless provider from closing a "significant gap" in service by the least intrusive means. This issue involves a two-pronged analysis: (1) whether the provider has demonstrated the existence of a "significant gap" in service; and (2) whether the proposed facility is the "least intrusive means," judged by the factors in the local regulations, to address the gap. *See T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987 (9th Cir. 2009); *see also T-Mobile West Corp. v. City of Agoura Hills*, 2010 U.S. Dist. LEXIS 134329 (C.D. Cal. 2010).

If a provider satisfies both prongs of the test, the local government is *required* to approve the facility, even if there would otherwise be substantial evidence to deny the permit under local land use provisions. This is because the provider has met the requirements for federal preemption; i.e., denial of the permit would "have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. §332(c)(7)(B)(1)(ii); *T-Mobile v. Anacortes*, 572 F.3d at 999. For the local jurisdiction to avoid such preemption, it must show that another alternative is available, that it is technologically feasible, and that it is "less intrusive" than the proposed facility. *T-Mobile v. Anacortes*, 572 F.3d at 998-999.

A. Verizon Wireless Has Demonstrated a Significant Gap in Service.

Verizon Wireless has identified a significant gap in service in the Altadena area, as described in the RF Engineer's Statement. As shown through maps included in the RF Engineer's Statement, there is a significant gap in Verizon Wireless service coverage in the Altadena area, affecting local residents and visitors (the "Significant Gap"). Text messages of support received from 566 Altadena area residents provide additional evidence of the need for improved Verizon Wireless service in the area.

B. The Proposed Facility Is the Least Intrusive Means to Fill the Significant Gap in Service.

In an effort to address the Significant Gap, Verizon Wireless reviewed eight locations – including collocation with the Sprint Facility – as described in the Verizon Wireless Alternatives Analysis. Verizon Wireless discounted alternatives that are infeasible, more intrusive or cannot serve the Significant Gap. The Alternatives Analysis confirms that the Proposed Facility is the least intrusive means of providing wireless service to the significant gap.

In short, Verizon Wireless has identified a significant gap in coverage and has shown that the Proposed Facility is the least intrusive means to address it, based on the values expressed in local regulations. Under these circumstances, Verizon Wireless has met the requirements for federal preemption such that denial of the permit would constitute an unlawful prohibition of service.

IV. Approval is Required in Order to Avoid Unreasonable Discrimination Against Verizon Wireless.

A local government may not unreasonably discriminate among providers of functionally equivalent services. 47 U.S.C. §332(c)(7)(B)(i)(I). Denial of the Proposed Facility would constitute unlawful discrimination against Verizon Wireless. The County granted approval to the existing Sprint treepole facility in 2007. While the Sprint facility is slightly taller and designed to resemble a palm tree, the Proposed Facility is of comparable height and also designed as a tree. Under these circumstances, where the Proposed Facility is clearly "similarly situated" to the approved Sprint facility, approval of the Proposed Facility avoids it from being "treated differently" than the Sprint facility and avoids discrimination under federal law.[1]

Conclusion

[1] *See Metro PCS, Inc. v. City and County of San Francisco*, 400 F.3d 715, 727 (9th Cir. 2005) ("...[F]ederal courts considering such cases have ruled that providers alleging unreasonable discrimination must show that they have been treated differently from other providers whose facilities are 'similarly situated'.")

Verizon Wireless has worked diligently to identify the ideal location for a wireless facility to provide improved service in the Altadena area. The Proposed Facility is consistent with all requirements of the Code and Wireless Policy. As acknowledged in Findings A through D of the Draft Resolution, it meets all required findings for issuance of a conditional use permit. Bringing improved Verizon Wireless service to this area is essential to the health, safety, and welfare of residents, visitors and emergency services providers in the surrounding community. We strongly encourage you to approve the Proposed Facility.

Very truly yours,

Paul B. Albritton

cc: Elaine Lemke, Esq.
Carl Nadela

Attachment

verizon
Verizon Wireless
15505 Sand Canyon Ave, Bldg. D
Irvine, CA 92618

November 10, 2016

Department of Regional Planning
County of Los Angeles
320 West Temple Street
Los Angeles, California 90012

Re: 566 Supporters for Verizon Wireless Facility
2949 Lincoln Avenue

To Whom It May Concern:

I am the Verizon Wireless Marketing Director over the team that maintains and manages all data and information messages that are sent to Verizon Wireless customers in California. In connection with the application referred to above, Verizon Wireless arranged for a text message to be sent to customers with billing addresses within the ZIP code 91001in the Altadena area. The entire text message sent reads as follows:

> Free VZW Message: Reply YES to this text to show your support for improved Verizon Wireless service in Altadena. Add a message to tell the County that you support a treepole wireless facility at the Sacred Heart Church located at 2949 Lincoln Avenue. Include your email address for updates.

The text message above was sent on November 8, 2016. As of November 10, 2016, we have received 566 affirmative text message responses indicating support for the proposed facility and ten respondents opposed. Text messages received confirmed the need to provide improved Verizon Wireless service in the Altadena area. Samples of the text messages of support received from Verizon Wireless customers appear on the attached pages.

I am available to verify the above information as you may require.

Sincerely,

Jeremy McCarty
Director
Customer Relationship Management

Attachment

Sample Text Messages of Support
for Verizon Wireless Facility
2949 Lincoln Avenue

YES - we need better. Coverage in Altadena

YES and yes to the treepole wireless facility. The service is awful north of Altadena dr.

Adding a tree pole wireless facility should definitely enhance my service. Thank you!

And we support the new pole too

I support a tree pole at Sacred Heart Church

I support a tree pole wireless facility at the sacred heart church at 2949 Lincoln avenue

I support a treepole wireless ofrancojd33 facility at the sacred heart church at 2949 Lincoln avenue

I support a Verizon treepole wireless facility at the Sacred Heart Church located on Lincoln Avenue in Altadena, .ca.

I support the improved cell reception in Altadena, for too long we have lived with poor service.

I support the tree pole in altadena located at2949 Lincoln ave

I support to have the treepole yes

Omg YES I support improved service for Altadena! Our reception is exceptionally poor!!!!!

Please allow Verizon to put up an infrastructure in Altadena

Please, we need it desperately

The treepole wireless facility is a greatly needed addition we need more like it.

Where I'm at service had not improved.

Would like tree poles at sacred heart church at 2949 Lincoln

Yes yes yes yes yes yes yes

YES - add a treepole!

YES - I support a tree pole at Sacred Heart Church!

YES - I support a wireless facility.

YES - pls improve service in Altadena we pay money for service and deserve to have good reception.

Yes & i thought there was one there already.

YES A tree pole wireless facility at Sacred Heart Church 2949 Lincoln Ave, would be welcome.

Yes and I support the tree pole wireless facility

YES and support a wireless facility at sacred heart church

Yes I do support the wireless facility on Lincoln Ave in Altadena;

YES I Support a tree pole on Lincoln Ave

Yes I support a tree pole I have terrible reception.

YES I support a tree pole wireless facility at 2949 Lincoln Ave in Altadena

Yes I support a tree pole wireless facility at the sacred heart church

Yes I support a treepole wireless facility

Yes I support a wireless tree at sacred hart.

YES I SUPPORT AND DEMAND THIS

Yes I support improved Verizon wireless service in Altadena by placing a treepole at the sacred heart church at 2949 Lincoln ave.

YES I support it

Yes I support pole at 2949 Lincoln Ave

Yes I support the wireless service in Altadena. That would be very great

YES I support Verizon putting a tree pole at Sacred Heart Church

Yes I would like better coverage on Lincoln as well as lake at Mendocino

Yes I would like to see better service in Altadena. I support a tree poll increase in signal at Sacred Heart Church.

YES my service sucks in altadena

YES Our coverage needs improvement, particularly in northern Altadena.

YES PLEASE

Yes Reception is so bad in Altadena, we really need this,PLEASE

YES we are in great need for better cell reception here.

YES we support tree pole wireless facility

Yes, I support a tree pole wireless facility at the Church to improve service in Altadena.

Yes, i support a treepole wireless facility at Sacred Heart Church.

YeS, I support a treepole wireless facility at the Sacred Heart Church located at 2949 Lincoln Avenue.

YES, I support the proposed treepole wireless facility at 2949 Lincoln Ave in Altadena.

YES, I want improved wireless service in Altadena.

Yes, We also need a wireless facility close to Allen and Altadena Drive. Thanks.

Yes, please improve cell coverage in Altadena. I was dropped from another call just 10 minutes ago!

Yes! Please! I have to pay for a signal Amplifier to get decent service right now.

Yes! We need better coverage in Altadena! I get dropped calls and slow texting from my house in Altadena

YES! WE need better service in Altadena. An added treepole at the Sacred Heart Church will help.

YES! We need service in Altadena, it's outrageous that I live in Los Angeles and can't use my cell phone at my house

YES!! We need better service in the hilly Altadena area. Some places are great, others are patchy.

YES!!! Please install the Verizon treepole wireless on Lincoln Avenue. Thank you.

Yes!!!! My service continues to deteriorate and I may need to switch carriers unless it improves soon!!!!

YES. I support a tree pole wireless facility at the Sacred Heart Church.

YES. I support the treepole wireless facility to improve coverage.

Yes. I support Verizon wireless at Sacred Heart Church. Kath.

Yes. Leslie Cross Town Square

yes. but it's actually near my home that i need it. have made numerous complaints and still have dropped calls at my home.

Yes. I only have a cell. The poor service puts our family in jeopardy of receiving emergency services.

Yes. I support a tree pole wireless at Sacred Heart church in Altadena.

YES. I support a tree pole wireless facility at the Sacred Heart Church located at 2429 Lincoln Avenue.

Yes. I support a tree pole wireless facility in Altadena to enable better cell service in Altadena.

Yes. I support a treepole wireless facility at the sacred heart church at 2949 Lincoln Ave.

Yes. I support tree pole wireless facility at Sacred Heart church.

Yes. I'm for improved service.

Yes. Make it happen Altadena!

Yes. Phone reception is very poor in my home.

Yes. Please put in a pole at Sacred Heart Church on 2449 Lincoln Avenue.

Yes. Support treepole wireless tower at 2949 N Lincoln.

Yes. We have virtually no cell service at our house and if it weren't for wifi, we would be without communication.

Yes. We need improved Verizon wireless service in Altadena.

YES. Wireless facility supported so people of altadena can have better service without having their privacy invaded. Thanks.

You need one on the other side of the Altadena golf course. I get crappy reception on the last block of Calaveras St.