

CORONAVIRUS (COVID-19) ADVISORY

IMPORTANT INSTRUCTIONS ON HOW TO PARTICPATE AND WATCH THE HERCULES CITY COUNCIL AND COMMISSION MEETINGS

On March 16, 2020, the Health Officer of Contra Costa County issued an Order through April 7, 2020 that directed that all individuals living in the county to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and governmental services.

Under the Governor's Executive Order N-25-20, this meeting may utilize teleconferencing or other virtual meeting platforms. Pursuant to the Governor's Executive Order N-25-20, teleconferencing restrictions of the Brown Act have been suspended.

Beginning with the April 14, 2020 Hercules City Council meeting, the City Council and Commissions will conduct its meeting utilizing ZOOM.

DUE TO THE SHELTER IN PLACE ORDERS AND PURSUANT TO EXECUTIVE ORDER N-25-20, direct public attendance or participation at council meetings has been suspended and the Council Chambers will be closed to the general public. The Commission and staff will participate virtually through the ZOOM application. Applicants, consultants, and others with matters before the Commission will be allowed to participate via ZOOM but must make prior arrangements with the Community Development Director.

How to watch the meeting from home:

1. Comcast Channel 28
2. Livestream online at <https://hercules.legistar.com/Calendar.aspx>

We are happy to accommodate written public comments. Public Comment will be accepted by email to smatinpour@ci.hercules.ca.us by 5:00 p.m. on the meeting date. Additional ways to provide your public comment is to mail your comment to City of Hercules, ATTN: Planning Commission – Public Comment (Meeting Date), 111 Civic Drive, Hercules, CA 94547 via USPS in time to reach the City no later than 5:00 p.m. on the day of the meeting or by telephone by calling (510) 799-8244 no later than 5:00 p.m. on the meeting date. All comments received by the close of the public comment period will be available after the meeting as supplemental materials and will become part of the official meeting record. The City cannot guarantee that its network and/or the site will not be uninterrupted. To ensure that the Commission receives your comments, you are strongly encouraged to submit your comments in writing in advance of the meeting by 5:00 p.m. on the day of the Commission meeting.

Individuals wishing to address the Commission are asked to provide the following information:

1. Subject Line to contain the words "PUBLIC COMMENTS"
2. (Optional) - Name, address and contact information of person providing comments.
3. General topic or agenda item you wish to comment on.

All public comments are allowed up to 3 minutes to relay their message or concern. All public comments are recorded and become part of the public record.

City of Hercules

111 Civic Drive
Hercules, CA 94547



Meeting Agenda

Monday, October 5, 2020

7:00 PM

Virtual Meeting Via Zoom

Planning Commission

Chair Irina Galieva
Vice Chair Hector Rubio
Commissioner Ken Morrison
Commissioner Susan Tolley
Commissioner Nicole Sacramento

To view webcast of meetings, live or on demand, go the City's website at www.ci.hercules.ca.us.

I. CALL TO ORDER - ROLL CALL

II. PLEDGE OF ALLEGIANCE

III. PUBLIC COMMUNICATION

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed as follows:

Public comment will be accepted by email to Shiva Matinpour at smatinpour@ci.hercules.ca.us by 5:00 p.m. on the meeting date and will be read into the record during public comment. All comments received by 5:00 p.m. of the meeting date will be available after the meeting as supplemental materials and will become part of the official meeting record. The City cannot guarantee that its network and/or the site will not be uninterrupted. To ensure that the City Council receives your comments, you are strongly encouraged to submit your comments in writing in advance of the meeting.

For additional alternatives to providing public comments please refer to the Notice of Important Instructions on how to Participate and Watch the Hercules City Council Meeting on the front page of the agenda.

Individuals wishing to address the Planning Commission are asked to provide the following information:

1. Subject line to contain the words "PUBLIC COMMENTS". 2. Name, address and contact information of person providing comments. 3. General topic or agenda item you wish to comment on.

All public comments are allowed up to 3 minutes to relay their message or concern. All public comments are recorded and become part of the public record.

IV. CONSENT CALENDAR

V. PUBLIC HEARINGS

1. [20-338](#) Special Use Permit No. 20-01, a request by Crown Castle (tower owner) and AT&T (operator) to replace existing telecommunications equipment with a 35-ft.-tall monopole at 3519 Franklin Canyon Road/Fernandez Ranch, open space land owned by the John Muir Land Trust, south of Highway 4 and the Franklin Canyon Golf Course.
Recommendation: Adopt resolution approving Special Use Permit No. 20-01.

Attachments: [SUP 20-01 - 3519 Franklin Canyon - Staff Report](#)
[SUP 20-01 - 3519 Franklin Canyon - Att 1 - Resolution](#)
[SUP 20-01 - 3519 Franklin Canyon - Exh A - Findings + Facts](#)
[SUP 20-01 - 3519 Franklin Canyon - Exh B - Conditions of Approval](#)
[SUP 20-01 - 3519 Franklin Canyon - Att 2 - Site Map & Photo Sims](#)
[SUP 20-01 - 3519 Franklin Canyon - Att 3 - Design Plans](#)
[SUP 20-01 - 3519 Franklin Canyon - Att 4 - Coverage Maps](#)
[SUP 20-01 - 3519 Franklin Canyon - Att 5 - RF-EME Compliance Report](#)

2. [20-339](#) Zoning Text Amendment No. 20-02, proposed amendments to the Hercules Municipal Code, Title 10, Chapter 16, Wireless Telecommunications Facilities, to update the City's current policies and processes regarding wireless facilities for conformity with current State and Federal standards and technologies.
Recommendation: Adopt resolution recommending City Council approve proposed changes to the Telecommunications Ordinance.

Attachments: [Telecom Ordinance - Small Facilities \(ZTA 20-02\) - Staff Report](#)
[Telecom Ordinance - Small Facilities \(ZTA 20-02\) - Resolution](#)
[Telecom Ordinance - Small Facilities \(ZTA 20-02\) - Att 1 - Redlined amendments](#)
[Telecom Ordinance - Small Facilities \(ZTA 20-02\) - Att 2 - Clean amendments](#)

VI. DISCUSSION / ACTION ITEMS

VII. PLANNING DIRECTOR REPORTS AND ANNOUNCEMENTS

VIII. COMMISSIONER REPORTS AND ANNOUNCEMENTS

IX. ADJOURNMENT

The next Regular Meeting of the Planning Commission is Monday, October 19, 2020, at 7:00 p.m. and will be held virtually via the Zoom web application.

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City's website at www.ci.hercules.ca.us then clicking on the Planning Commission meeting you are interested in. You can also receive an e-notice from the City's homepage. Agendas and staff reports may also be obtained by contacting the Planning Department at (510) 799-8244.

Posted: October 1, 2020

COMMISSION STATEMENT OF PURPOSE: The Planning Commission typically meets the first and third Monday of every month; its primary functions are to advise the City Council on policy matters in regard to the growth and development of the City of Hercules and to act on applications for development permits.

SPECIAL ACCOMODATIONS: In compliance with the Americans with Disabilities Act, if you require special accommodations to participate in a Planning Commission meeting, please contact the City Clerk at 510-799-8215 at least 48 hours prior to the meeting.

AGENDA ITEMS: Persons wishing to add an item to an agenda must submit the final written documentation 12 calendar days prior to the meeting. The City retains the discretion whether to add items to the agenda. Persons wishing to address the Commission otherwise may make comments during the Public Communication period of the meeting.

PUBLIC COMMUNICATION: Persons who wish to address the Commission should complete the speaker form prior to the Commission's consideration of the item on the agenda. Speakers will be called after the project applicant has presented the project.

Anyone who wishes to address the Commission on a topic that is not on the agenda and is relevant to the Commission should complete the speaker form prior to the start of the meeting. Speakers will be called upon during the Public Communication portion of the meeting. In accordance with the Brown Act, the Commission may not take action on items not listed on the agenda. The Commission may refer to staff any matters brought before them at this time and those matters may be placed on a future agenda.

In the interests of conducting an orderly and efficient meeting, speakers will be limited to three (3) minutes.

Anyone may also submit written comments at any time before or during the meeting.

CONSENT CALENDAR: All matters listed under Consent Calendar are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless requested by a member of the Commission or a member of the public prior to the time the Commission votes on the motion to adopt.

PUBLIC HEARINGS: A public hearing enables the public to present information, opinions, and arguments relevant to the actions of the Commission, and informs the public about the details of the proposal.

At the beginning of an item, the Chair will read the description of that item as stated on the agenda. The staff will then give a brief presentation of the proposed project. The Commission may then ask staff questions about the item.

The Chair will open the public hearing and ask the applicant(s) if he or she wishes to make a presentation or statement. Those persons in favor of the project will then be given an opportunity to speak followed by those who are opposed to the project. The applicant(s) will then be given an opportunity for rebuttal.

The public hearing will then be closed, and the Commission may discuss the item amongst themselves and ask questions of staff. The Commission will then vote to approve, deny, approve in a modified form, or continue the matter to a later date for a decision. The Chair will announce the Commission's decision and advise the audience of the appeal procedure.

Persons who wish to speak on matters set for public hearings will be heard when the Chair calls for comments in support thereof or in opposition thereto. After the hearing is closed, there is no further comment permitted from the audience unless invited by the Chair.

The Commission has decided that no public hearings will begin after 11:00 p.m., and that items still remaining on the agenda after 11:00 p.m. will be held over to the next Commission meeting.

LEGAL CHALLENGES: If you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the meeting or in written correspondence delivered at, or prior to, the meeting. Actions challenging Commission decisions shall be subject to the time limitations contained in the Code of Civil Procedures Section 1094.6.

NOTIFICATION PROCEDURE: Property owners within 300 feet of a proposal will receive a notice of the proposal at least ten (10) days prior to the public hearing. The notice lists the type of application, application number, brief description and location of the project, and the applicant. The City of Hercules subscribes to a service that uses the property owner information from the most recent data on the Contra Costa County Tax Assessor's rolls. Please be aware there often is a time lag for both the tax rolls and this service to be updated.

AGENDA POSTING: The Planning Commission Agenda is posted at least 72 hours prior to the meeting at City Hall, the Hercules Swim Center, Ohlone Child Care Center, Hercules Post Office, and on the City's website (www.ci.hercules.ca.us),

REVIEW OF PUBLIC DOCUMENTS: All Planning applications are public documents, and can be reviewed by the public. These files, however, are not allowed out of the office. Should a member of the public require copies of information contained within the file, a written request must be submitted to the City Clerk's Office. Staff will accommodate the request within ten (10) calendar days. The charge is \$0.20 per page. If you require a complete copy of the file, or if staff cannot accommodate your request within ten (10) calendar days, you must make arrangements to bring in a copier or copy service that can make copies without leaving City Hall.

Environmental Impact Reports, Specific Plans, and other project specific documents are made available for the public to review at City Hall at 111 Civic Drive, Hercules CA. Loan copies (limited supply) are available for review, not purchase, at the Planning Department. These documents must be checked out with staff. You will be asked to provide your name, phone number, and a deposit. Persons will be informed of the date and time the document must be returned. You may check out the loan document, but staff will not make a complete copy of the document. Staff will accommodate the request to make photocopies based upon the current workload and availability of personnel to make copies. Costs are outlined in above paragraph.



**CITY OF HERCULES
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Chair Galieva and Members of the Planning Commission

FROM: Robert Reber, Community Development Director
Robert Ross, Technical Expert/Consultant (The Center for Municipal Solutions)
Larissa Alchin, Planning Intern

FOR: The Regular Planning Commission Meeting of October 5, 2020

SUBJECT: **SPECIAL USE PERMIT (SUP) NO. 20-01**, a request by Crown Castle (tower owner) and AT&T (operator) for site modification and tower replacement at 3519 Franklin Canyon Road/Fernandez Ranch, open space land owned by the John Muir Land Trust, south of Highway 4 and the Franklin Canyon Golf Course.

Location: 3519 Franklin Canyon Rd.
(Assessor Parcel Number 362-020-022-4)
Hercules, California 94547

Applicant: AT&T Wireless
5001 Executive Pkwy.
San Ramon, California 94583

Crown Castle
1 Park Plaza, Suite 300
Dublin, California 94568

As represented by Bob Gundermann (Beacon Development Group)
489 McLeod St.
Livermore, California 94550

1. RECOMMENDATION

Staff recommends that the Planning Commission:

- a. Request City staff present the staff report;
- b. Open the public hearing and receive testimony;
- c. Request clarification, if necessary, from staff or the applicant on any issues related to Special Use Permit No. 20-01;

- d. Close the public hearing; and
- e. Adopt resolution (Attachment 1) approving Special Use Permit No. 20-01, based on the attached findings with facts (Exhibit A) and subject to conditions of approval (Exhibit B)

2. SITE & PROJECT DESCRIPTION

The project site is an approximately 20 ft. x 35 ft. compound, leased from the John Muir Land Trust on the 472.33-acre Fernandez Ranch property, located at 3519 Franklin Canyon Rd. (Assessor Parcel Number 362-020-022-4) south of Highway 4 and the Franklin Canyon Golf Course.

AT&T is the carrier for the existing wireless site at 3519 Franklin Canyon Rd originally approved Use Permit No. 10-93 and Design Review Permit 11-93 in 1993. Within the 8-ft.-tall barbed wire-topped chain-link fence is a 9-ft. x 9-ft. equipment shelter. Antennas are mounted on three (3) existing 11-ft.-tall poles and a tree outside the compound fence. There are an additional three (3) antenna attached to the compound fence. The proposed project would construct a new 35-ft.-tall monopole, relocate the existing antennas and associated equipment to the new tower, remove the existing antenna supports as needed, and rework the compound fencing to the appropriate height. The monopole is to be camouflaged to blend in with the existing surrounding trees so that the site will be minimally visible.

The proposed communications facility would operate 24 hours per day, seven days per week, to receive and transmit phone calls, text messages, email, and data. The most prominent feature of the facility would be the 35-ft.-tall monopole tower (See Attachment 2). Per the draft Conditions of Approval (Exhibit B), camouflage design of the monopole (e.g., disguised as a faux evergreen tree) is subject to subsequent ministerial approval of the Community Development Director, though the Planning Commission can revise the conditions of approval to require that final design be reviewed and approved by the Commission. The tower would be bolted to a concrete pad within the existing chain link fence on the project site. Six (6) 55.1- inch-tall AT&T antennas will be mounted to the monopole, two (2) each at heights of 18 feet, 25 feet, and 32 feet above ground level. AT&T's related ground-based equipment (e.g., remote radio units, utility racks, telecommunications equipment, etc.) would be housed within the existing equipment shelter located on a concrete pad at the base of the proposed antenna. The three (3) existing 11-ft.-tall poles will be removed.

The proposed modifications are necessary to improve the coverage and capacity of the existing 4G LTE (4th Generation—Long-Term Evolution) network in the region. 4G LTE can deliver speeds up to 10 times faster than industry-average 3G speeds. LTE technology also offers lower latency, i.e., the processing time it takes to move data through a network, such as the time to start downloading a webpage or file once a data request is sent. Also, LTE uses radio frequency (RF) spectrum more efficiently than other technologies, creating more space to carry data traffic and services and to deliver a better

overall network experience. AT&T designs, builds, and expands its wireless network as necessary to satisfy its customer service standards. Currently the project site is configured as a One LTE carrier (channel) base station. This means that the potential performance of the 4G LTE network is currently not fully realized, which is impactful for those who rely on the AT&T network for broadband data services, use mobile phones as their primary communication device (landlines to residences have decreased significantly), and rely on mobile phones to do more (e.g., emergency 911, GPS, web access, text, etc.). The proposed modification will provide substantial improvement in high speed 4G LTE service to residents and travelers in the area (see Attachment 4).

3. GENERAL PLAN DESIGNATION AND EXISTING LAND USE

The project property's land use designation is Franklin Canyon Area. The adjacent areas within Hercules are also zoned Franklin Canyon Area and Public Open Space (P/QP-O). The property is also adjacent to unincorporated Contra Costa County land zoned as Agricultural Preserves. The Franklin Canyon Area land use designation and regulations were approved by Hercules voters on November 2, 2004, as Measure M (*Protect Franklin Canyon Area Initiative*), subsequently adopted by the City Council on December 14, 2004, as Ordinance No. 401 (*Hercules General Plan Amendment and Land Use Designation for the Franklin Canyon Area*). The primary purpose of the Ordinance is "maintain[ing] existing use of the Canyon and surrounding areas for agriculture, outdoor recreation, very low-density residential, and open space uses." The existing wireless site was in place at the time of the ordinance's approval, and as such, would be a legal existing use. Furthermore, although the wireless site is privately owned and operated, telecommunications facilities are generally considered legally as public utilities, even when they are privately-owned/operated commercial facilities. Public utilities are allowed uses under the Franklin Canyon Area regulations:

SECTION 9. Uses

The following uses and their normal and appropriate accessory uses and non-residential structures (as well as uses preemptively authorized by Federal and State law) are permitted in the Franklin Canyon Area, if they comply with all of the provisions of the Plan and with other City prohibitions, restrictions, regulations, conditions and requirements that further the Plan:...

- (g) City and other government facilities and uses, and public utility facilities, that are limited to meeting the needs created by uses permitted in the Franklin Canyon Area, unless the Planning Commission reasonably finds more extensive public need that cannot practicably be met outside the Franklin Canyon Area. However, this exception for more extensive public need shall not apply to waste treatment and disposal or commercial electrical power generating facilities. Publicly provided outdoor recreation and nature observation and enjoyment and ancillary accommodations are permitted whenever like for-profit uses would be allowed.*

4. ENVIRONMENTAL DETERMINATION

The proposed installation of a 35-ft.-tall monopole and antennas to replace three existing 11-ft.-tall poles and antennas within an existing 20-foot by 35-foot telecommunications compound is considered categorically exempt under the provisions of the California Environmental Quality Act (CEQA), specifically:

- Class 1, Section 15301, Existing Facilities, which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of an existing or former use, including existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services; and
- Class 3, Section 15303, New Construction or Conversion of Small Structures, which consists of the construction and location of limited numbers of new, small facilities or structures including water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction.

5. GENERAL PLAN AND MUNICIPAL CODE CONFORMANCE

Special Use Permit No. 20-01 proposes to modify an existing unstaffed wireless telecommunications facilities consistent with the General Plan in that:

- Improved telecommunication service meets Objective 3 of the Land Use Element on page II-13 of the adopted General Plan: “Ensure the provision of public facilities and services needed to support growth that balances jobs, commercial, and housing opportunities and also protects the quality of life in the community.”
- Improved telecommunication services will also meet Objective 9 of the Economic Development Element on page IX-12 of the General Plan: “Retain and support existing businesses through creation of a positive business environment and through programs to strengthen and promote development of existing businesses.”

Special Use Permit No. 20-01 is also consistent with the Hercules “Wireless Telecommunications Facilities” Ordinance (Section 10-16.101 of the Hercules Municipal Code), whose purpose and intent are to:

- “...provide for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare;”
- “...minimize the physical impact of wireless telecommunications facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Hercules”;

- “...minimize the physical and visual impact on the community, including but not limited to the use of stealth or camouflaging siting techniques, so as to make the facility substantially invisible, or as nearly so as is reasonably possible”;
- “...assure the protection of the public health and safety... [through] compliance with the FCC’s regulations regarding RF emissions, either for individually owned equipment or cumulatively for all equipment at the site”;
- “...place and construct and operate such [wireless telecommunications] facilities in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions..., including but not limited to general maintenance requirements to items such as fencing, landscape, blight abatement, graffiti abatement and nuisance abatement”;
- “[limit] the maximum permitted total height of a new tower or support structure [to] thirty-five (35) feet above pre-construction ground level.”

6. ANALYSIS

- General Discussion.** The applicants, Crown Castle and AT&T Wireless, as represented by Bob Gundermann of Beacon Development Group, are requesting Planning Commission approval to install and operate one (1) 35-ft.-tall monopole with multiple attached wireless communications antennas and associated ground equipment. Municipa Code Section 10-16, Telecommunications Wireless Facilities (first adopted by the Hercules City Council in 1997 and updated in 2015), requires that the installation of telecommunications antennas be reviewed and approved by the Planning Commission.
- Property History or Permits.** The project site is a 472.33-acre property, formerly known as Franklin Canyon, which was acquired by John Muir Land Trust and added to the larger Fernandez Ranch open space in 2010. On November 2, 2004, a majority of Hercules voters approved Measure M (*Protect Franklin Canyon Area Initiative*). The existing wireless site at 3519 Franklin Canyon Rd was approved in 1993 and was in use at the time Measure M was approved. In 2018 the (6) six existing AT&T antennas were replaced and new related ground-based equipment was installed.
- Circulation, Access, and Parking.** As currently performed for the existing facility, maintenance crews would continue to access the telecommunications facility via the existing private road from the Franklin Golf Course. The site also contains a gated compound, with parking inside and in front of the compound.
- Maintenance.** The monopole tower, antennas, and associated equipment cabinets are completely self-operating and thus unstaffed. Once constructed, AT&T Wireless technicians will visit the site approximately once per month for maintenance during normal operations, and more often if any equipment malfunctions.

- e. **Zoning Compliance.** The proposed telecommunications facility is classified as a utility facility. The project site is within the Franklin Canyon Area zone, for which public utility facilities are subject to a special use permit.
- f. **Site Design Analysis.** The antenna configuration and enclosure design and placement maximize the utility's effective range while minimizing potential visual impacts to what is currently open space, as stipulated in aesthetic rules of the Franklin Canyon Area Ordinance:

Section 13. Visual Safeguards

- (b) To the extent practicable, structures shall be located, including by setbacks from parcel boundaries, on that part of a parcel that minimizes visibility from public places, except agricultural structures essential for agricultural purposes may be located in more visible areas if necessary.*
- (c) Development shall be subordinate to and blend with the natural and open space qualities of the area where located, so as to be as unobtrusive as possible, and not to impair those qualities. Consistent with that end, alteration of topography by grading, excavating, filling or other development activity shall be minimized. In all cases, appropriate landscaping, preservation of vegetation, screening, and building materials shall be required by the City to minimize the visual impact of development. To the maximum extent practicable, exterior lighting must be located, designed, and shielded so as to confine direct rays to the parcel where the lighting is located and to protect the darkness of the night sky.*
- (d) The height of buildings shall not exceed 35 feet.*

The top of the proposed tower would be at 35 feet above grade. The site is at an approximate ground elevation of 413 feet, with the ground elevation of the nearest ridge line at approximately 560 feet, thus placing the site approximately 147 feet below the ridge line. With the addition of the new 35-ft.-tall tower, the top of the tower would be more than 100 feet below the ridge line, as required by Hercules Municipal Code Section 10-16.103(b)(6) (Location of Wireless Telecommunications Facilities).

Photo simulations showing before and after views of the proposed project are shown in Attachment 2. Because the photo simulations from the access road are taken from below the site and angled up, the project site appears to be on the ridgeline when in fact it is nearly 150 feet below the ridge line. The photo simulations show a bare, non-camouflaged monopole so that the facility can be easily located on the photos.

- g. **Technical Analysis.** Technical experts at The Center for Municipal Solutions (CMS), serving as consultants to the City, reviewed the radio frequency (RF) coverage maps (Attachment 4) and project data sheets (Attachment 5) and found them to be accurate.

CMS consultants also reviewed the full set of construction drawings (Attachment 3) and found them to be complete.

7. ISSUES FOR COMMISSION CONSIDERATION

Planning Commission should decide if the applicants' request to install and operate one (1) 35-ft.-tall monopole and associated antennas and ground equipment is appropriate and consistent with the surrounding area. Planning Commission should also consider is (a) the monopole should be a camouflage design (e.g., faux tree), and (b) if so, then whether the design should be subject to administrative staff approval or Planning Commission approval.

8. ATTACHED EXHIBITS

- Attachment 1: Draft Resolution (SUP 20-01)
 - Exhibit A: Findings with Facts (SUP 20-01)
 - Exhibit B: Conditions of Approval (SUP 20-01)
- Attachment 2: Site Map & Photo Simulations
- Attachment 3: Design Plans
- Attachment 4: LTE 4G Service Coverage Maps
- Attachment 5: RF-EME Compliance Report

**ATTACHMENT 1
RESOLUTION NO. 20-____
SPECIAL USE PERMIT NO. 20-01**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES APPROVING SPECIAL USE PERMIT NO. 20-01, A REQUEST TO CONSTRUCT, OPERATE, AND MAINTAIN AN UNSTAFFED WIRELESS COMMUNICATIONS FACILITY CONSISTING OF ONE (1) 35-FT.-TALL MONOPOLE WITH SIX (6) ANTENNAS AND ASSOCIATED GROUND EQUIPMENT, AT 3519 FRANKLIN CANYON ROAD, HERCULES, CA 94547 (APN 362-020-022-4), SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, the Planning Commission of the City of Hercules has considered an application for a Special Use Permit filed by AT&T and Crown Castle, in accordance with Section 10, Chapter 13 of the Hercules Municipal Code / Wireless Telecommunications Facilities Ordinance (Ord. No. 487); and

WHEREAS, the Planning Commission finds that the installation of the unstaffed wireless facility, including one (1) monopole with six (6) wireless antennas and associated ground-level equipment, is categorically exempt under the provisions of the California Environmental Quality Act (CEQA) under:

- Class 1, Section 15301, Existing Facilities, which consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of an existing or former use, including existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services; and
- Class 3, Section 15303, New Construction or Conversion of Small Structures, which consists of the construction and location of limited numbers of new, small facilities or structures including water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction; and

WHEREAS, the Planning Commission finds, after due study of the proposed use with the supporting finding with facts (as provided in Exhibit A hereto), deliberation, and public hearing, that the following circumstances exist with regard to the use permit application:

1. The facility does not conflict with safety and safety-related codes and requirements;
2. The facility conforms to the City's policy of concealment;
3. The facility does not conflict with the historic nature or character of a neighborhood or district;
4. The use or construction of the facility is not contrary to an already stated purpose of a specific zoning or land use designation;
5. The placement and location of the facility does not create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of

- the City or employees of the service provider or other service providers, or the reasonable probability of such;
6. The placement and location of a facility does not result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area; and
 7. The facility does not conflict with the provisions of Hercules Municipal Code Title 10 Chapter 16.

WHEREAS, the Planning Commission finds that the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work or visit this development.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Hercules hereby determines that the proposed use is Categorically Exempt according to Section 15301, "Existing Facilities," of the California Environmental Quality Act (CEQA); and

NOW, THEREFORE, BE IT FURTHER RESOLVED the Planning Commission approves Special Use Permit (SUP) #20-01 located at 3519 Franklin Canyon Road, based on the Findings with Facts (Exhibit A) and subject to Conditions of Approval (Exhibit B).

Passed and adopted this fifth day of October 2020, by the following vote:

AYES:

NOES:

ABSENT:

Irina Galieva, Chairwoman, 2020

Shiva Matinpour, Secretary

EXHIBIT A
FINDINGS WITH FACTS
SPECIAL USE PERMIT NO. 20-01

Section 10.16.114 of the Zoning Ordinance requires the following findings with facts be made by the Planning Commission to approve a Special Use Permit:

FINDING NO. 1: The facility does not conflict with safety and safety-related codes and requirements.

FACT: All work and materials will be performed and installed in accordance with the current editions of the 2019 California Buildings Standards Code, Title 24, California Code of Regulations (effective January 1, 2020). Special Use Permit (SUP) #20-01 will allow AT&T to expand and improve its services and coverage in the surrounding area, thus “ensuring a broad range of telecommunications services and high quality telecommunications infrastructure are provided to serve the community, as well as serve an important and effective part of Hercules emergency response network” [from Ordinance No. 487, adopted by the City Council on August 11, 2015]. General Plan Objective 3 on p. II-13 of the Land Use Element requires that the City “ensure the provision of public facilities and services needed to support growth that balances jobs, commercial, and housing opportunities, and also protects the quality of life in the community.” The new cellular phone and data services approved under SUP #20-01 will expand and improve telecommunication service for customers in and around Hercules.

FINDING NO. 2: The facility conforms to the City’s policy of concealment.

FACT: “Concealment” means a physical design or treatment that minimizes adverse aesthetic and visual impacts on the view from land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a wireless telecommunications facility, which shall mean the least visually and physically intrusive facility, so as to make it substantially invisible, and that is not technologically or commercially impracticable under the facts and circumstances” (Sec. 10-16.130). Special Use Permit #20-01 proposes installation of a 35-foot camouflaged antenna support monopole. The monopole will be disguised or camouflaged as a tree similar to the surrounding vegetation. The equipment cabinets will remain at the current location behind existing vegetation, concealing most of the project from view along Highway 4. SUP #20-01 is consistent with General Plan Objective 1d on page I-2: “Plan for the preservation and enhancement of visual qualities as viewed from scenic routes.”

FINDING NO. 3: The facility does not conflict with the historic nature or character of a neighborhood or district.

FACT: SUP #20-01 is consistent with the historic nature and character of the Franklin Canyon Area. The existing approved antennas and mounting poles at 3519 Franklin Canyon Rd are not camouflaged. The proposed monopole and antennas would be camouflaged and moved within the existing chain-link fenced compound. The project area is located within open space land protected by Measure M. Ordinance No. 401 (*Protect Franklin Canyon Area Initiative*) maintains existing use of Franklin Canyon and surrounding areas. The AT&T wireless site existed at the time of this ordinance's approval as a legal conforming use.

FINDING NO. 4: The use or construction of the facility is not contrary to an already stated purpose of a specific zoning or land use designation.

FACT: The purpose of the Franklin Canyon Area land use designation is to protect Franklin Canyon and nearby open space lands from harmful and unnecessary development. The project site for Special Use Permit #20-01 is at an existing approved wireless site and would maintain the existing open space. The facility would be accessed via an existing roadway, and no additional improvements are required. The gated facility would be accessed through a pair of existing swinging chain link gates. The installation of the antennas and equipment cabinets would not generate additional traffic on existing streets or the need for additional street improvements. As a Public Utility, this site could fall under the following sections of Ordinance 401:

SECTION 9(g) Uses—"City and other government facilities and uses, and public utility facilities, that are limited to meeting the needs created by uses permitted in the Franklin Canyon Area, unless the Planning Commission reasonably finds more extensive public need that cannot practicably be met outside the Franklin Canyon Area. However, this exception for more extensive public need shall not apply to waste treatment and disposal or commercial electrical power generating facilities. Publicly provided outdoor recreation and nature observation and enjoyment and ancillary accommodations are permitted whenever like for-profit uses would be allowed."

SECTION 13(d) Visual Safeguards—"The height of buildings shall not exceed 35 feet." The top of the proposed tower is at 35 feet. The site is at an approximate ground elevation of 413 feet, and the ground elevation of the ridge line is approximately 560 feet, thus placing the site approximately 147 feet below the ridge line. With the addition of the new 35-foot-tall tower, the top of the tower would be more than 100 feet below the ridge line. The antennas and monopole is to be camouflaged to blend

in with the existing surrounding trees so that the site will be minimally visible. The facility would be unstaffed and require only routine monthly maintenance, thus there would be no traffic impacts to the surrounding area.

FINDING NO. 5: The placement and location of the facility does not create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;

FACT: The project has been conditioned to comply with the current Uniform Building, Electrical, Plumbing and Fire Safety Codes which will insure that the installation of the antennas and equipment cabinets protects the health and safety of the residents of Hercules and the employees of AT&T Wireless. The calculated electromagnetic field strength levels in publicly accessible areas are well below the existing Federal Communications Commission (FCC) standard for allowed exposure of unlimited duration, and therefore no significant impacts to the public or the environment are expected. SUP 20-01 will comply with Sec. 10-16.111 (k) "Setback and Fall Zone. All proposed towers and any new proposed support structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: (1) a distance equal to the height of the proposed tower or support structure plus ten percent (10%) of the height of the tower or other structure, otherwise known as the fall zone; or (2) the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located within the fenced compound area as approved in the special use permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The fall zone shall be measured from the nearest edge of the tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines. At the discretion of the Commission, the preceding may not apply to support structures located in the public rights-of-way so long as required minimum distances to adjacent buildings are complied with."

FINDING NO. 6: The placement and location of a facility does not result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;

FACT: SUP 20-01 is consistent with the nature and character of the surrounding area within the city and in Contra Costa County. The adjacent areas within the City of Hercules are zoned Franklin Canyon Area and Public Open Space (P/QP-O). The property is also adjacent to unincorporated Contra Costa County Zoned Agricultural Preserves.

FINDING NO. 7: The facility does not conflict with the provisions of Hercules Municipal Code, Title 10, Chapter 16.

FACT: The proposed project poses no conflicts with the provisions of Title 10, Chapter 16 of the Hercules Municipal Code (Wireless Telecommunications Facilities). The code states, “The intent of this Chapter is to minimize the physical impact of wireless telecommunications facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Hercules.” The proposed AT&T wireless project at 3519 Franklin Canyon is consistent with the intent of this code.

EXHIBIT B
CONDITIONS OF APPROVAL
SPECIAL USE PERMIT NO. 20-01

The departments and divisions listed below have primary responsibility for implementing listed conditions of approval.

LEGEND:	B = Building	CA = City Attorney	F = Fire District
	PD = Police Dept.	PL = Planning	PW = Public Works

Special Conditions

1. The panel antennas shall be camouflaged to match the existing surrounding vegetation. (PL)
2. The antenna monopole shall not exceed 35-feet in height. (PL)
3. The ground-level equipment cabinets shall be contained within the existing equipment shelter. (PL)

Community Development and Public Services Standard Conditions

4. The permit is granted for the property as described in the application and shall not be transferable from one parcel to another. (PL)
5. This permit shall become null and void within 12 months from the date of its issuance, unless the proposed development or use has been diligently pursued. The issuance of a building permit for structural construction shall be a minimum requirement for evidence of diligent pursuit. (PL)
6. The development or use by the applicant/grantee of any activity or structure authorized by this permit shall constitute acceptance of all of the conditions and obligations imposed by the City on this permit. The applicant/grantee by said acceptance waives any challenge as to the validity of these conditions. (CA)
7. Applicant/developer agrees as a condition of approval of this resolution to indemnify the City and to defend as the developer's owner expense and its agents, officers and employees against and from any claim, action or proceeding brought within the time period provided for in Section 66499.37 of the Government Code to attack, set aside, void or annul the approval of this resolution. City shall promptly notify developer of such claim, action or proceeding of which City receives notice, and City will cooperate fully with developer in the defense thereof. Developer shall reimburse the City for any court costs and attorney's fees which the City may be required to pay as a result of any such action. City may, in its sole discretion, participate in the defense of any such claim, action or proceeding, but such participation shall not relieve the developer of the obligations of this condition. (CA)

8. A building permit shall be secured for any new construction or modifications to structures authorized by this permit. (B)
9. The location and elevations of the monopole, antennas, and equipment cabinets shall substantially conform to black-line prints submitted with this application, unless amended specifically by a condition of this resolution or by a major modification. The final building plans submitted with the building permit application shall clearly indicate all building materials and colors to be used in construction. (B, PL)
10. Minor changes or minor increases in the extent of use or size of structures may be approved by the Planning Director, but any substantial change or increase will require the filing and approval of a major modification by an amended permit by the Planning Commission. (PL)
11. Minor changes in the final design or materials and colors for installation of the monopole, antennas, equipment cabinets, and any other component of the project may be approved by the Planning Director with the filing of a minor modification permit to this project. Any request for a minor modification shall be accompanied by three copies of any plans reflecting the requested modification. (PL)
12. Prior to the issuance of a building permit, a reproduction of all conditions of this permit approval as adopted by resolution of the Planning Commission and/or City Council shall be part of, and incorporated into, all sets of the construction documents, and specifications for this project. A reproduction of all conditions shall be included on each set of the job/construction documents. (B, PL)
13. The developer/applicant shall paint all exterior surfaces of the equipment cabinet building with graffiti resistant paint wherever possible. (PL)
14. The developer/applicant shall maintain the site and subject property free of any graffiti. (B)
15. Graffiti applied to any surface of the subject property shall be removed within twenty-four (24) hours of the developer/applicant being notified by the City. The City may remove the graffiti if the developer/applicant fails to remove the graffiti within 24 hours; the developer/applicant shall reimburse the City for the graffiti-removal work. (B)
16. Plans submitted for design review approval shall be considered final design drawings. Any changes to the exterior shall be subject to approval of the Planning Commission except minor changes may be approved by staff. (PL)
17. A copy of these conditions shall be duplicated and submitted with the building construction drawings cover sheet. (PL)
18. If at any time it has been determined that the applicant or successor has failed to abide by any conditions set forth in these Conditions of Approval or applicable laws of the City of

Hercules, the Planning Commission shall have the authority to revoke the project permit, as authorized in Section 50.700 of the Zoning Ordinance. (PL)

19. If the applicant or successor abandons, discontinues, or changes the use of the facility authorized under this permit for a continuous period of six (6) months or more, Conditional Use Permit 11-02 shall be considered abandoned and shall no longer be valid, and reported as such to the Planning Commission, as stipulated in Section 50.600 of the Zoning Ordinance. (PL)

Standard Public Works Conditions

20. Developer shall pay plan check and processing fees in effect at the time of permit application, and development fees, encroachment permit fees, and other miscellaneous applicable fees in effect at the time building permits are issued. (PW)
21. Developer shall remove and replace any improvements adjacent to the project site that are damaged during construction, as determined and directed by the Public Works Inspector. (PW)
22. Prior to construction, the Engineering Division shall approve permits for the following:
 - a. Grading
 - b. Encroachment

Standard Fire District Conditions

23. The developer shall provide on-site fire protection and access as determined necessary by the Fire District. (FD)
24. Design, installation, and maintenance of the water supply for any on-site fire protection system shall be subject to approval by the Fire District.
25. Construction plans will be required for the Fire District to provide a complete and final review prior to construction. A minimum of two (2) sets shall be provided. The Fire District will retain one set and return the remainder with comments.

These are preliminary comments based on the concept as presented. The Fire District may require construction plans for a more proper review and comment.





Existing

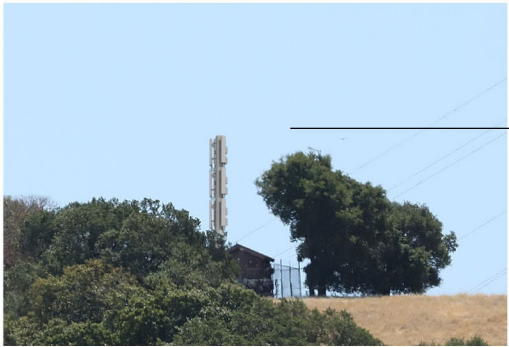


proposed relocated antennas

Proposed

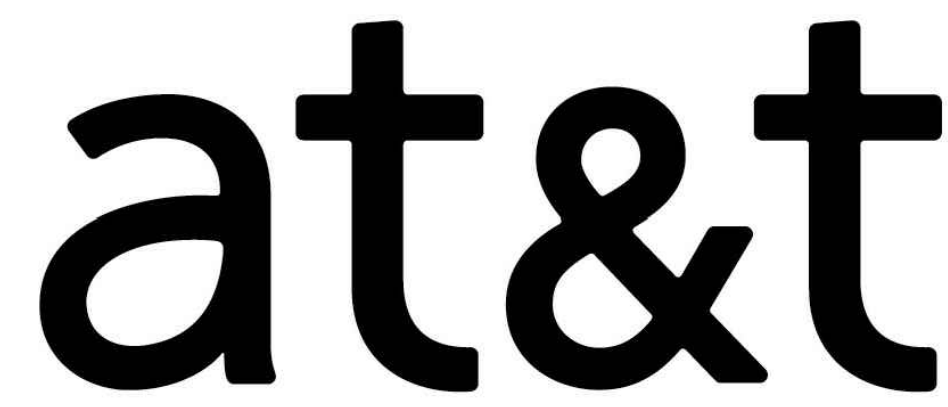


Existing



proposed relocated antennas

Proposed



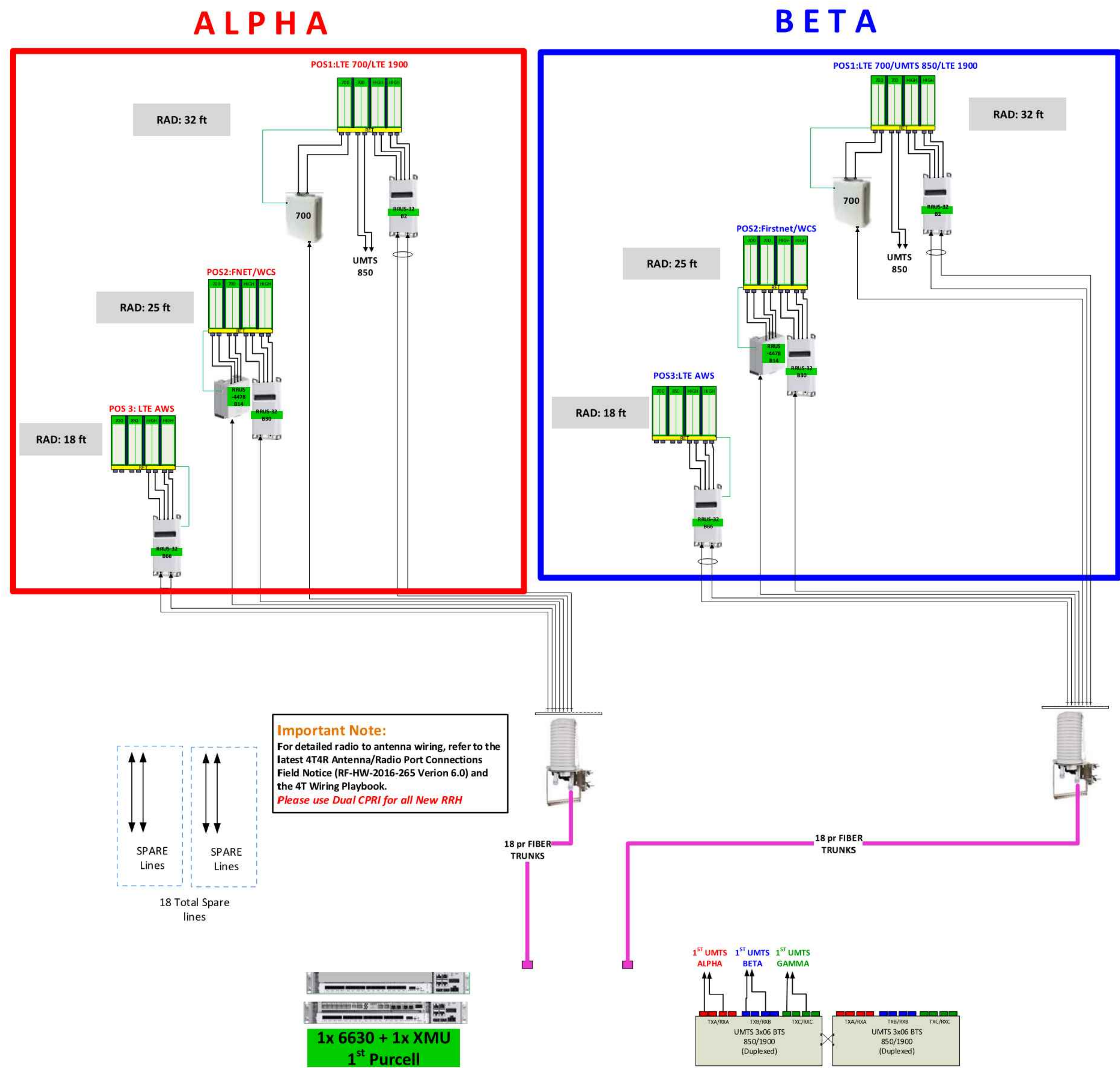
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MRSFR041531 - 3701A0BKXT - LTE 4C

CROWN CASTLE SITE ID: BU 845530


SITE TYPE: SHELTER/MONOPOLE

SHEET NUMBER:
T-1

25



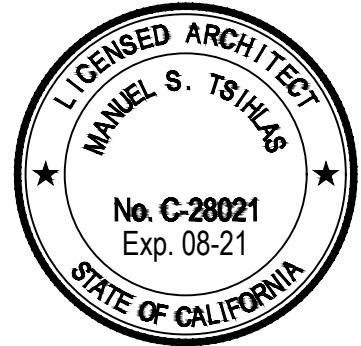
Issued For:
CCL00093
HWY 4 - HERCULES
3519 FRANKLIN CANYON ROAD
HERCULES, CA 94547

PREPARED FOR

5001 Executive Parkway
San Ramon, California 94583

Vendor:


AT&T SITE NO: CCL00093
PROJECT NO: 213.0953
DRAWN BY: CTC
CHECKED BY: ALB

REV	DATE	DESCRIPTION
1	06/01/20	100% CD
	04/30/20	90% CD
	01/22/20	90% CD

Licensee:

IT IS A VIOLATION OF LAW FOR ANY PERSON, UNLESS THEY ARE ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ENGINEER, TO ALTER THIS DOCUMENT.

Architect:

1520 River Park Drive
Sacramento, California 95815

SHEET TITLE:
PLUMBING DIAGRAM

SHEET NUMBER:
T-2

1. PLANS ARE INTENDED TO BE A DIAGRAMMATIC OUTLINE ONLY, UNLESS NOTED OTHERWISE. WORK SHALL INCLUDE FURNISHING MATERIALS, EQUIPMENT, APPURTENANCES & LABOR NECESSARY TO COMPLETE ALL INSTALLATIONS AS INDICATED ON DRAWINGS.
2. CONTRACTOR SHALL OBTAIN, IN WRITING, AUTHORIZATION TO PROCEED BEFORE STARTING WORK ON ANY ITEM NOT CLEARLY DEFINED OR IDENTIFIED BY THE CONTRACT DOCUMENTS.
3. CONTRACTOR SHALL CONTACT USA (UNDERGROUND SERVICE ALERT) AT (800 227-2600, FOR UTILITY LOCATIONS, 48 HOURS BEFORE PROCEEDING WITH ANY EXCAVATION, SITE WORK, OR CONSTRUCTION.
4. CONTRACTOR SHALL INSTALL ALL EQUIPMENT & MATERIALS IN ACCORDANCE WITH MANUFACTURER'S RECOMMENDATIONS UNLESS SPECIFICALLY INDICATED OTHERWISE, OR WHERE LOCAL CODES OR REGULATIONS TAKE PRECEDENCE.
5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CBC / UBC'S REQUIREMENTS REGARDING EARTHQUAKE RESISTANCE, FOR, BUT NOT LIMITED TO, PIPING, LIGHT FIXTURES, CEILING GRID, INTERIOR PARTITIONS, AND MECHANICAL EQUIPMENT. ALL WORK MUST COMPLY WITH LOCAL EARTHQUAKE CODES AND REGULATIONS.
6. REPRESENTATIONS OF TRUE NORTH, OTHER THAN THOSE FOUND ON THE PLOT OF SURVEY DRAWINGS, SHALL NOT BE USED TO IDENTIFY OR ESTABLISH BEARING OF TRUE NORTH ON SITE. CONTRACTOR SHALL RELY SOLELY ON THE PLOT OF SURVEY DRAWING & ANY SURVEYOR'S MARKINGS AT THE SITE FOR THE ESTABLISHMENT OF TRUE NORTH, & SHALL NOTIFY THE ARCHITECT / ENGINEER PRIOR TO PROCEEDING WITH WORK IF ANY DISCREPANCY IS FOUND BETWEEN VARIOUS ELEMENTS OF THE WORKING DRAWINGS AND THE TRUE NORTH ORIENTATION AS DEPICTED ON THE CIVIL SURVEY. CONTRACTOR SHALL ASSUME SOLE LIABILITY FOR ANY FAILURE TO NOTIFY THE ARCHITECT / ENGINEER.
7. THE BUILDING DEPARTMENT ISSUING THE PERMITS SHALL BE NOTIFIED AT LEAST TWO WORKING DAYS PRIOR TO THE COMMENCEMENT OF WORK, OR AS OTHERWISE STIPULATED BY THE CODE ENFORCEMENT OFFICIAL HAVING JURISDICTION.
8. DO NOT EXCAVATE OR DISTURB BEYOND THE PROPERTY LINES OR LEASE AREA LINES, UNLESS OTHERWISE NOTED.
9. ALL EXISTING UTILITIES, FACILITIES, CONDITIONS, & THEIR DIMENSIONS SHOWN ON THE PLANS HAVE BEEN PLOTTED FROM AVAILABLE RECORDS. ARCHITECT / ENGINEER & OWNER ASSUME NO RESPONSIBILITY WHATSOEVER AS TO THE SUFFICIENCY OR ACCURACY OF INFORMATION SHOWN ON PLANS, OR THE MANNER OF THEIR REMOVAL OR ADJUSTMENT. CONTRACTORS SHALL BE RESPONSIBLE FOR DETERMINING EXACT LOCATION OF ALL EXISTING UTILITIES & FACILITIES PRIOR TO START OF CONSTRUCTION. CONTRACTORS SHALL ALSO OBTAIN FROM EACH UTILITY COMPANY DETAILED INFORMATION RELATIVE TO WORKING SCHEDULES & METHODS OF REMOVING OR ADJUSTING EXISTING UTILITIES.
10. CONTRACTOR SHALL VERIFY ALL EXISTING UTILITIES, BOTH HORIZONTALLY & VERTICALLY, PRIOR TO START OF CONSTRUCTION. ANY DISCREPANCIES OR DOUBTS AS TO THE INTERPRETATION OF PLANS SHOULD BE IMMEDIATELY REPORTED TO THE ARCHITECT/ ENGINEER FOR RESOLUTION & INSTRUCTION. NO FURTHER WORK SHALL BE PERFORMED UNTIL THE DISCREPANCY IS CHECKED & CORRECTED BY THE ARCHITECT/ENGINEER. FAILURE TO SECURE SUCH INSTRUCTIONS MEANS CONTRACTOR WILL HAVE WORKED AT HIS/HER OWN RISK & EXPENSE.
11. ALL NEW & EXISTING UTILITY STRUCTURES ON SITE & IN AREAS TO BE DISTURBED BY CONSTRUCTION SHALL BE ADJUSTED TO FINISH ELEVATIONS PRIOR TO FINAL INSPECTION OF WORK.
12. ANY DRAIN AND/OR FIELD TILE ENCOUNTERED OR DISTURBED DURING CONSTRUCTION SHALL BE RETURNED TO ITS ORIGINAL CONDITION PRIOR TO COMPLETION OF WORK. SIZE, LOCATION & TYPE OF ANY UNDERGROUND UTILITIES OR IMPROVEMENTS SHALL BE ACCURATELY NOTED & PLACED ON "AS-BUILT" DRAWINGS BY GENERAL CONTRACTOR, & ISSUED TO ARCHITECT / ENGINEER AT COMPLETION OF PROJECT.
13. ALL TEMPORARY EXCAVATIONS FOR THE INSTALLATION OF FOUNDATIONS, UTILITIES, ETC., SHALL BE PROPERLY LAID BACK OR BRACED IN ACCORDANCE WITH CORRECT OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) REQUIREMENTS.
14. INCLUDE MISCELLANEOUS ITEMS PER AT&T SPECIFICATIONS.

SUBCONTRACTOR'S WORK SHALL COMPLY WITH ALL APPLICABLE NATIONAL, STATE, AND LOCAL CODES AS ADOPTED BY THE LOCAL AUTHORITY HAVING JURISDICTION (AHJ) FOR THE LOCATION.

THE EDITION OF THE AHJ ADOPTED CODES & STANDARDS IN EFFECT ON THE DATE OF THE CONTRACT AWARD SHALL GOVERN THE DESIGN.

SUBCONTRACTORS WORK SHALL COMPLY WITH THE LATEST EDITION OF THE FOLLOWING STANDARDS:

- A. AMERICAN CONCRETE INSTITUTE (ACI) 318, BUILDING CODE REQUIREMENTS FOR STRUCTURAL CONCRETE
- B. AMERICAN INSTITUTE OF STEEL CONSTRUCTION (AISC), MANUAL OF STEEL CONSTRUCTION, ASD, NINTH EDITION
- C. TELECOMMUNICATIONS INDUSTRY ASSOCIATION (TIA) 222-G, STRUCTURAL STANDARD FOR STRUCTURAL ANTENNA TOWER AND ANTENNA SUPPORTING STRUCTURES
- D. INSTITUTE FOR ELECTRICAL AND ELECTRONICS ENGINEERS (IEEE) 81, GUIDE FOR MEASURING EARTH RESISTIVITY, GROUND IMPEDANCE, AND EARTH SURFACE POTENTIALS OF A GROUND SYSTEM IEEE 1100 (1999) RECOMMENDED PRACTICE FOR POWERING AND GROUNDING OF ELECTRICAL EQUIPMENT.
- E. IEEE C62.41, RECOMMENDED PRACTICES ON SURGE VOLTAGES IN LOW VOLTAGE AC POWER CIRCUITS (FOR LOCATION CATEGORY "C3" AND "HIGH SYSTEM EXPOSURE")

TIA 607 COMMERCIAL BUILDING GROUNDING AND BONDING REQUIREMENTS FOR TELECOMMUNICATIONS:

- A. TELCORDIA GR-63 NETWORK EQUIPMENT-BUILDING SYSTEM (NEBS): PHYSICAL PROTECTION
- B. TELCORDIA GR-347 CENTRAL OFFICE POWER WIRING
- C. TELCORDIA GR-1275 GENERAL INSTALLATION REQUIREMENTS
- D. TELCORDIA GR-1503 COAXIAL CABLE CONNECTIONS

ANY & ALL OTHER LOCAL & STATE LAWS & REGULATIONS.

FOR ANY CONFLICTS BETWEEN SECTIONS OF LISTED CODES AND STANDARDS REGARDING MATERIAL, METHODS OF CONSTRUCTION, OR OTHER REQUIREMENTS, THE MOST RESTRICTIVE SHALL GOVERN. WHERE THERE IS CONFLICT BETWEEN A GENERAL REQUIREMENT AND A SPECIFIC REQUIREMENT, THE SPECIFIC REQUIREMENT SHALL GOVERN.

B.	ANCHOR BOLT	HDR.	HEADER
ABV.	ABOVE	HGR.	HANGER
ACCA	ANTENNA CABLE COVER ASSEMBLY	HT.	HEIGHT
ADD1	ADDITIONAL	ICGB.	ISOLATED COPPER GROUND BUS
A.F.F.	ABOVE FINISHED FLOOR	IN. (")	INCH(ES)
A.F.G.	ABOVE FINISHED GRADE	INT.	INTERIOR
ALUM.	ALUMINUM	LB.(#)	POUND(S)
ALT.	ALTERNATE	L.B.	LAG BOLTS
ANT.	ANTENNA	L.F.	LINEAR FEET (FOOT)
APPRX.	APPROXIMATE(LY)	L.	LONG(ITUDINAL)
ARCH.	ARCHITECT(URAL)	MAS.	MASONRY
AWG.	AMERICAN WIRE GAUGE	M.AX.	MAXIMUM
BLDG.	BUILDING	M.B.	MACHINE BOLT
BLK.	BLACK	MECH.	MECHANICAL
BLKG.	BLOCKING	MFR.	MANUFACTURER
BM.	BEAM	MIN.	MINIMUM
B.N.	BOUNDARY NAILING	MISC.	MISCELLANEOUS
BTBW.	BARE TINNED COPPER WIRE	MTL.	METAL
B.O.F.	BOTTOM OF FOOTING	(N)	NEW
B/U	BACK-UP CABINET	NO.(#)	NUMBER
CAB.	CABINET	N.T.S.	NOT TO SCALE
CANT.	CANTILEVER(ED)	O.C.	ON CENTER
C.I.P.	CAST IN PLACE	OPNG.	OPENING
CLG.	CEILING	P/C	PRECAST CONCRETE
CLR.	CLEAR	PCS	PERSONAL COMMUNICATION SERVICES
COL.	COLUMN	PLY.	PLYWOOD
CONC.	CONCRETE	PPC	POWER PROTECTION CABINET
CONN.	CONNECTION(OR)	PRC	PRIMARY RADIO CABINET
CONST.	CONSTRUCTION	P.S.F.	POUNDS PER SQUARE FOOT
CONT.	CONTINUOUS	P.S.I.	POUNDS PER SQUARE INCH
d	PENNY (NALS)	P.T.	PRESSURE TREATED
DBL.	DOUBLE	PWR.	POWER (CABINET)
DEPT.	DEPARTMENT	QTY.	QUANTITY
D.F.	DOUGLAS FIR	RAD.(R)	RADIUS
DIA.	DIAMETER	REF.	REFERENCE
DIAG.	DIAGONAL	REINF.	REINFORCEMENT(ING)
DIM.	DIMENSION	REQ D/	REQUIRED
DWG.	DRAWING(S)	RGs.	RIGID GALVANIZED STEEL
DWL.	DOWEL(S)	SCH.	SCHEDULE
EA.	EACH	SH.	SHEET
EL.	ELEVATION	SIM.	SIMILAR
ELEC.	ELECTRICAL	SPEC.	SPECIFICATIONS
ELEV.	ELEVATOR	SQ.	SQUARE
EMT.	ELECTRICAL METALLIC TUBING	S.S.	STAINLESS STEEL
E.N.	EDGE NAIL	STD.	STANDARD
ENG.	ENGINEER	STL.	STEEL
EQ.	EQUAL	STRUC.	STRUCTURAL
EXP.	EXPANSION	TEMP.	TEMPORARY
EXST.(E)	EXISTING	THK.	THICK(NESS)
EXT.	EXTERIOR	T.N.	TOE NAIL
FAB.	FABRICATION(OR)	T.O.A.	TOP OF ANTENNA
F.F.	FINISH FLOOR	T.O.C.	TOP OF CURB
F.G.	FINISH GRADE	T.O.F.	TOP OF FOUNDATION
FIN.	FINISH(ED)	T.O.P.	TOP OF PLATE (PARAPET)
FLR.	FLOOR	T.O.S.	TOP OF STEEL
FDN.	FOUNDATION	T.O.W.	TOP OF WALL
F.O.C.	FACE OF CONCRETE	TYP.	TYPICAL
F.O.M.	FACE OF MASONRY	U.G.	UNDER GROUND
F.O.S.	FACE OF STUD	U.L.	UNDERWRITERS LABORATORY
F.O.W.	FACE OF WALL	U.N.O.	UNLESS NOTED OTHERWISE
F.S.	FINISH SURFACE	V.I.F.	VERIFY IN FIELD
FT.(')	FOOT (FEET)	w	WIDE (WIDTH)
FTG.	FOOTING	w/	WITH
G.	GROWTH (CABINET)	WD.	WOOD
G.A.	GUAGE	W.P.	WEATHERPROOF
GL.	GALVANIZED(E)	WT.	WEIGHT
G.F.I.	GROUND FAULT CIRCUIT INTERRUPTER	C	CENTERLINE
GLB. (GLU-LAM)	GLUE LAMINATED BEAM	P	PLATE, PROPERTY LINE
GPS	GLOBAL POSITIONING SYSTEM		
GRND.	GROUND		

	BLDG. SECTION		(E) BRICK
	WALL SECTION		(E) MASONRY
	DETAIL		CONCRETE
	ELEVATION		EARTH
			GRAVEL
			PLYWOOD
			SAND
			PLYWOOD
			SAND
			(E) STEEL
	DOOR SYMBOL		MATCH LINE
	WINDOW SYMBOL		GROUND CONDUCTOR
	TILT-UP PANEL MARK		OVERHEAD SERVICE CONDUCTORS
	PROPERTY LINE		TELEPHONE CONDUIT
	CENTERLINE		POWER CONDUIT
	ELEVATION DATUM		COAXIAL CABLE
	GRID/COLUMN LINE		CHAIN LINK FENCE
	KEYNOTE, DIMENSION ITEM		WOOD FENCE
	KEYNOTE, CONSTRUCTION ITEM		(P) ANTENNA
	WALL TYPE MARK		(P) RRU
	OFFICE		(P) DC SURGE SUPPRESSION
	ROOM NAME ROOM NUMBER		(F) ANTENNA
			(F) RRU
			(E) EQUIPMENT

PREPARED FOR

 **at&t**

5001 Executive Parkway
San Ramon, California 94583

AT&T SITE NO:	CCL00093
PROJECT NO:	213.0953
DRAWN BY:	CTC
CHECKED BY:	ALB

[illegible]

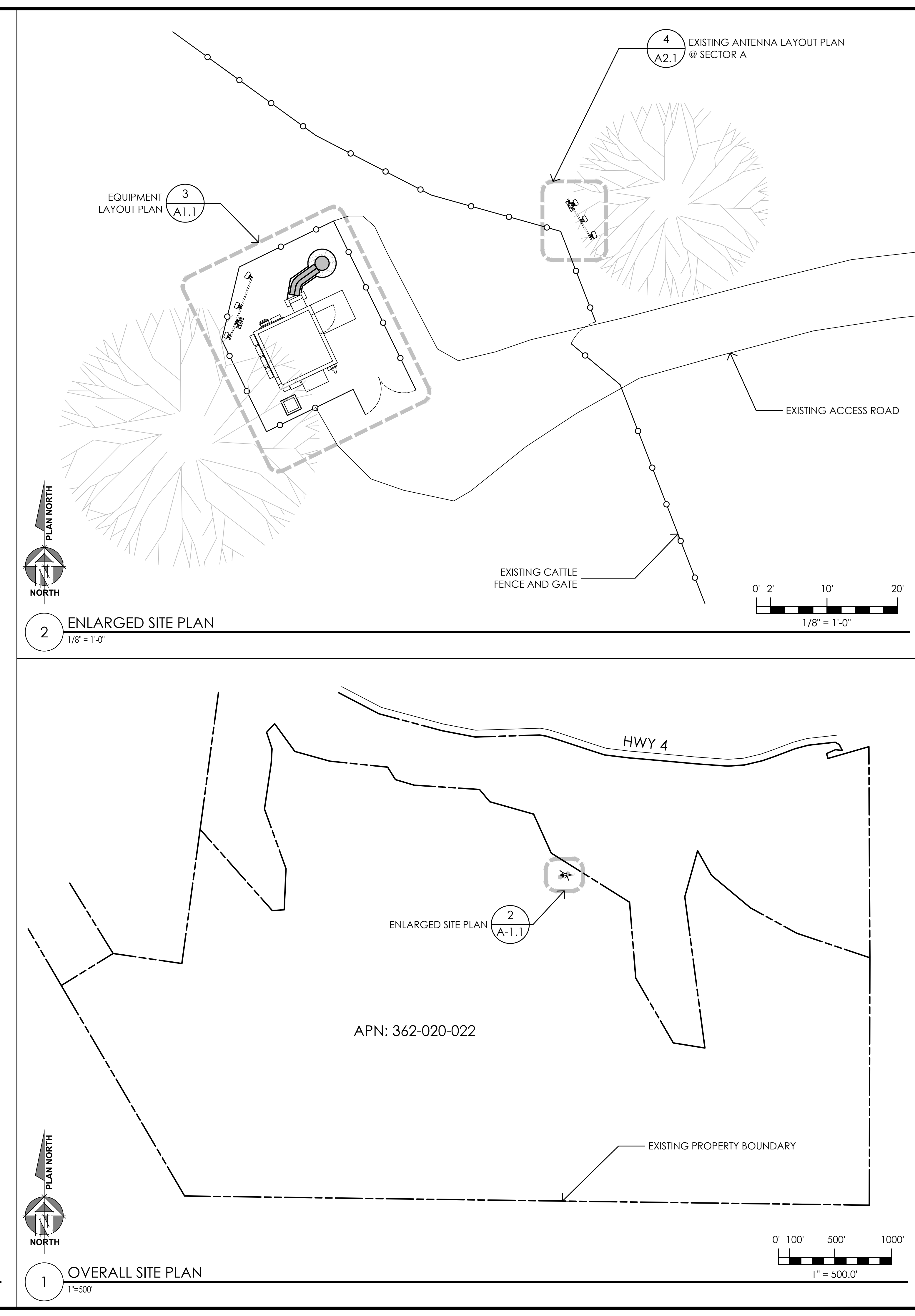
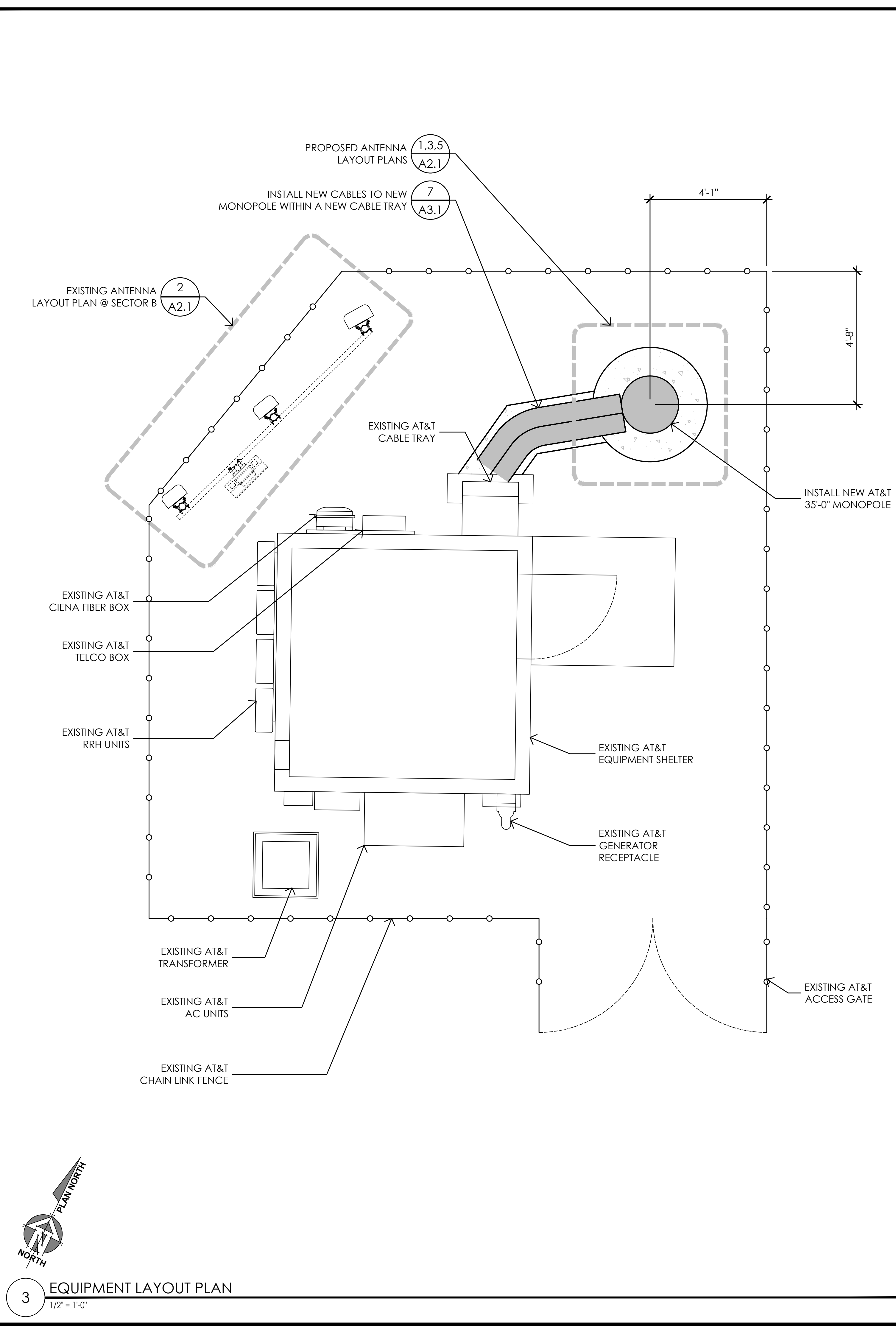
Architect:



MST ARCHITECTS

1520 River Park Drive
Sacramento, California 95815

SHEET NUMBER:
GN-1



Issued For:

CCL00093

HWY 4 - HERCULES

3519 FRANKLIN CANYON ROAD
HERCULES, CA 94547

PREPARED FOR

5001 Executive Parkway
San Ramon, California 94583

Vendor:

AT&T SITE NO: CCL00093

PROJECT NO: 213.0953

DRAWN BY: CTC

CHECKED BY: ALB

REV	DATE	DESCRIPTION
1	06/01/20	100% CD
	04/30/20	90% CD
	01/22/20	90% CD

Licensee:

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Architect:

1520 River Park Drive
Sacramento, California 95815

SHEET TITLE:

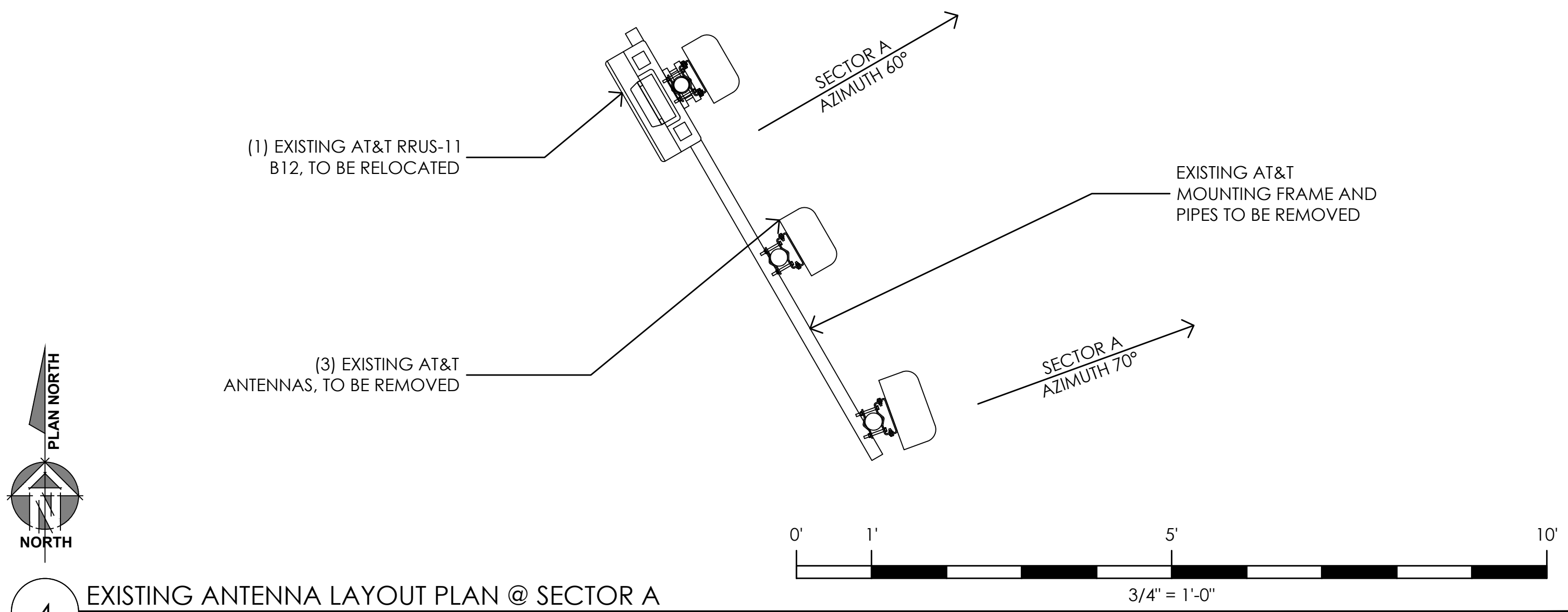
OVERALL SITE PLAN & EQUIPMENT LAYOUT PLAN

SHEET NUMBER:

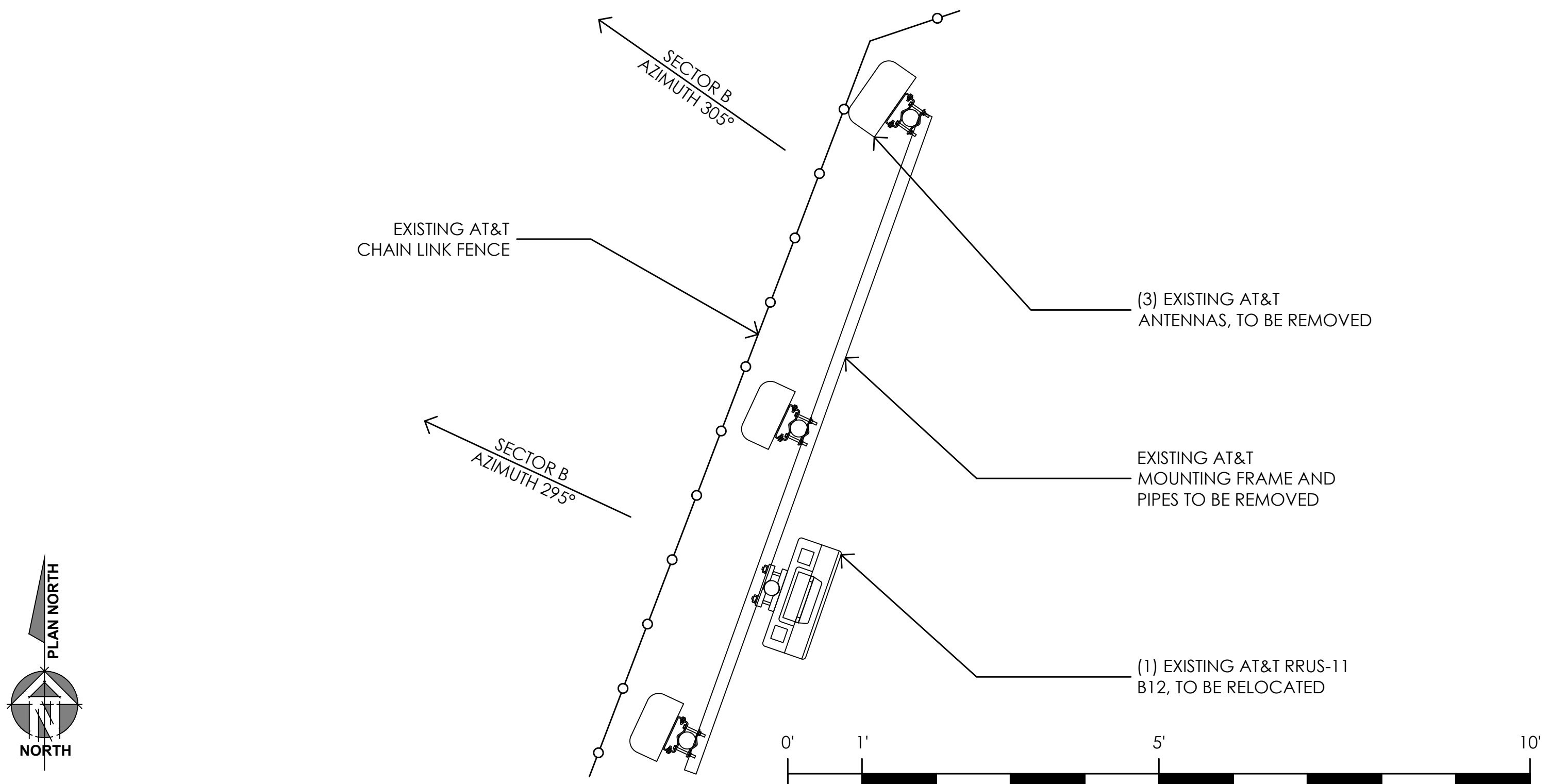
A-1.1

EXISTING RF SCHEDULE						
SECTOR		ANTENNA MODEL NO.	AZIMUTH	CENTERLINE	RRH	COAX LENGTH
ALPHA	A1	KATHREIN 742-264	60°	5'		± 84'-0"
	A2	KATHREIN 742-264	60°	5'		± 84'-0"
	A3	KATHREIN 800-10764K	70°	5'	(1) RRUS-11 B12	± 84'-0"
BETA	B1	KATHREIN 742-264	295°	8'-8"		± 84'-0"
	B2	KATHREIN 742-264	295°	8'-8"		± 84'-0"
	B3	KATHREIN 800-10764K	305°	8'-8"	(1) RRUS-11 B12	± 84'-0"

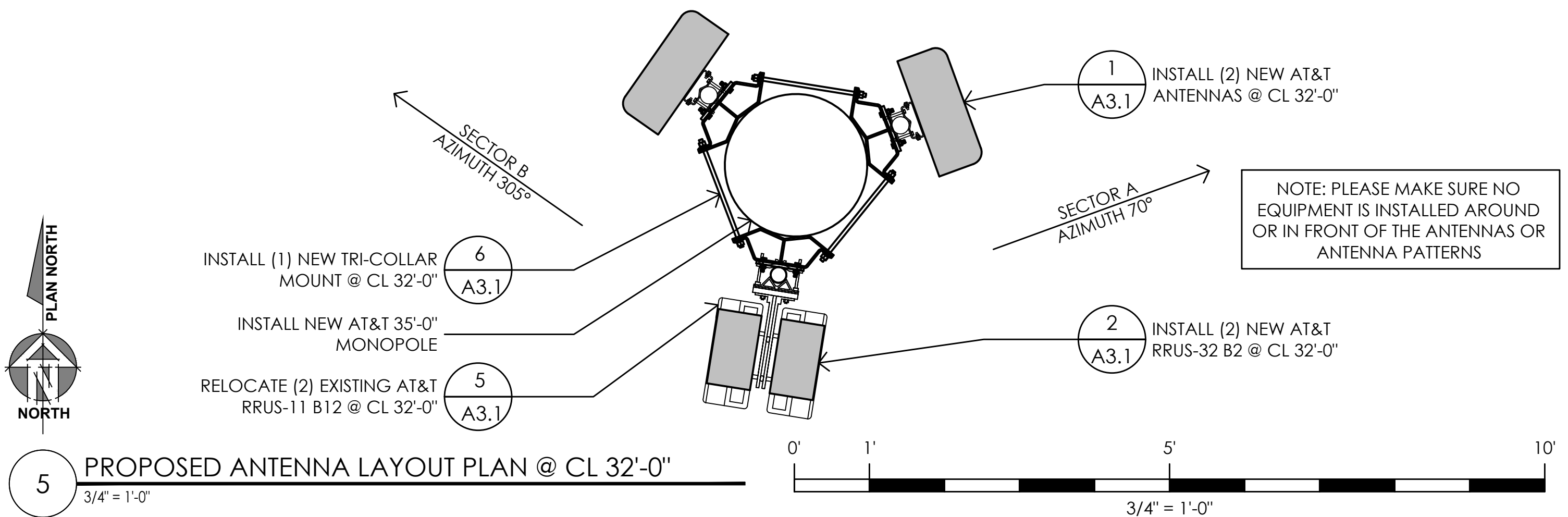
PROPOSED RF SCHEDULE						
SECTOR		ANTENNA MODEL NO.	AZIMUTH	CENTERLINE	RRH	COAX LENGTH
ALPHA	A1	NNHH-65A-R4	70°	32'-0"	(1) RRUS-11 B12, (1) RRUS-32 B2	± 84'-0"
	A2	NNHH-65A-R4	70°	25'-0"	(1) RRUS-4478 B14, (1) RRUS-32 B30	± 84'-0"
	A3	NNHH-65A-R4	70°	18'-0"	(1) RRUS-32 B66A	± 84'-0"
BETA	B1	NNHH-65A-R4	305°	32'-0"	(1) RRUS-11 B12, (1) RRUS-32 B2	± 84'-0"
	B2	NNHH-65A-R4	305°	25'-0"	(1) RRUS-4478 B14, (1) RRUS-32 B30	± 84'-0"
	B3	NNHH-65A-R4	305°	18'-0"	(1) RRUS-32 B66A	± 84'-0"



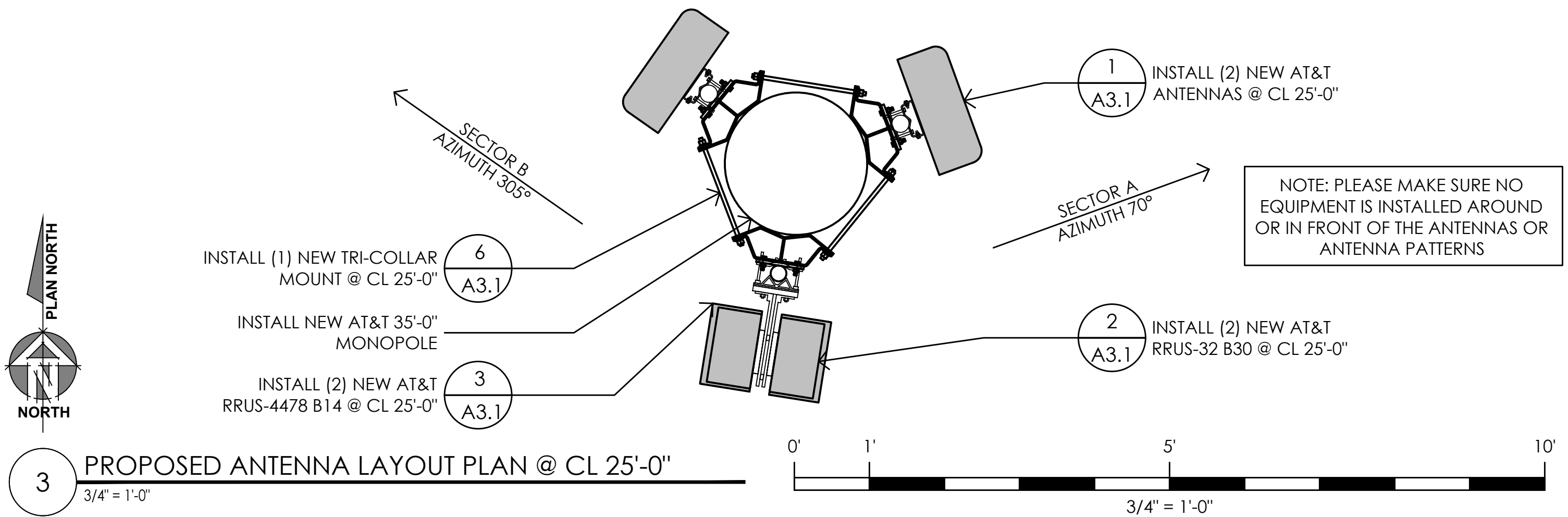
4 EXISTING ANTENNA LAYOUT PLAN @ SECTOR A



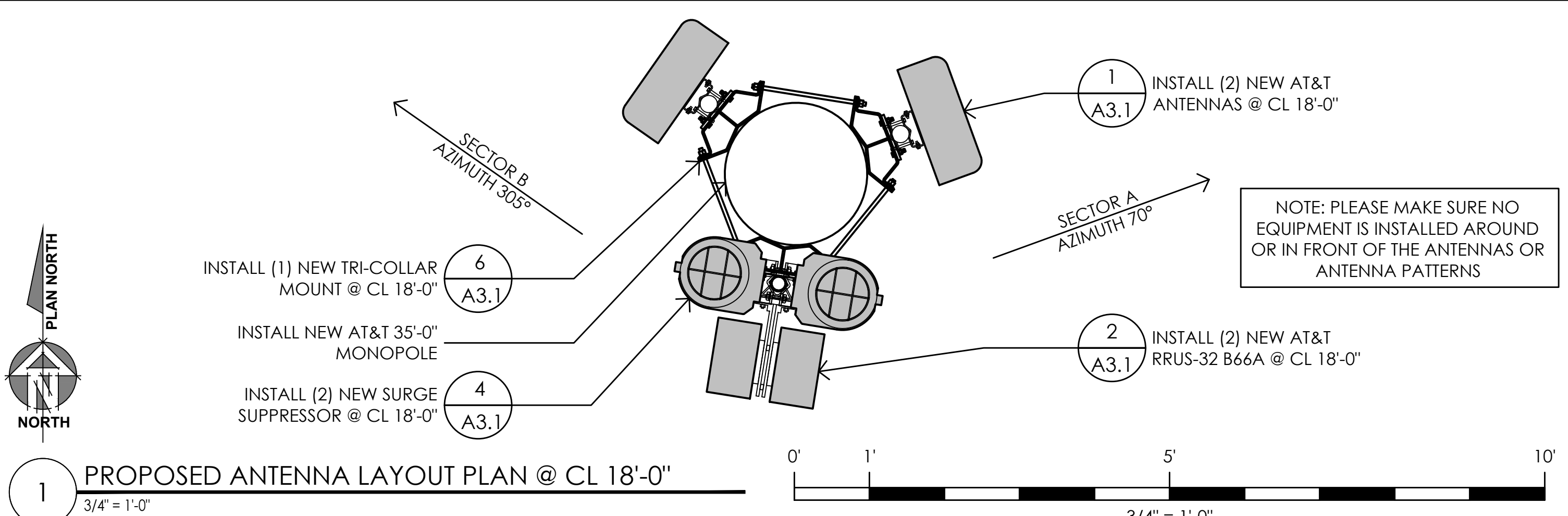
2 EXISTING ANTENNA LAYOUT PLAN @ SECTOR B



5 PROPOSED ANTENNA LAYOUT PLAN @ CL 32'-0"



3 PROPOSED ANTENNA LAYOUT PLAN @ CL 25'-0"



1 PROPOSED ANTENNA LAYOUT PLAN @ CL 18'-0"

Issued For:
CCL00093
HWY 4 -
HERCULES

3519 FRANKLIN
CANYON ROAD
HERCULES, CA 94547

PREPARED FOR

5001 Executive Parkway
San Ramon, California 94583

Vendor:

AT&T SITE NO: CCL00093
PROJECT NO: 213.0953
DRAWN BY: CTC
CHECKED BY: ALB

REV	DATE	DESCRIPTION
1	06/01/20	100% CD
	04/30/20	90% CD
	01/22/20	90% CD

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Architect:

1520 River Park Drive
Sacramento, California 95815

SHEET TITLE:
ENLARGED
ANTENNA
LAYOUT PLANS

SHEET NUMBER:
A-2.1

$$6 \frac{10^{-5}}{1'' = 1' \cdot 0'}$$

The image contains two technical drawings of an antenna mounting system. The top drawing is a top-down view of the circular antenna face, which has a crosshair pattern. It is labeled with a diameter of 11". The side view below shows the antenna's profile, which is 2'-3" high. The mounting hardware is labeled with dimensions and components: a 2-1/4" standard galvanized pipe mount, MFR standard pipe mount hardware, a surge suppression system for antenna sectors closer than 18 feet apart, ground to antenna ground bar or building steel, MFR standard clips, and coax lines to antennas. The antenna face is 11" wide, and the mounting hardware is 9" high. The surge suppression system is 2'-3" high.

11"

2'-3"

9"

11"

2-1/4" STANDARD GALVANIZED PIPE MOUNT

MFR STANDARD PIPE MOUNT HARDWARE

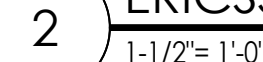
GROUND TO ANTENNA GROUND BAR OR BUILDING STEEL

MFR STANDARD CLIPS

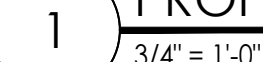
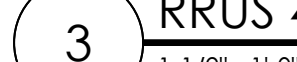
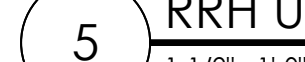
COAX LINES TO ANTENNAS

SURGE SUPPRESSION SYSTEM FOR USE AT ANTENNA SECTORS CLOSER THAN 18 FEET APART

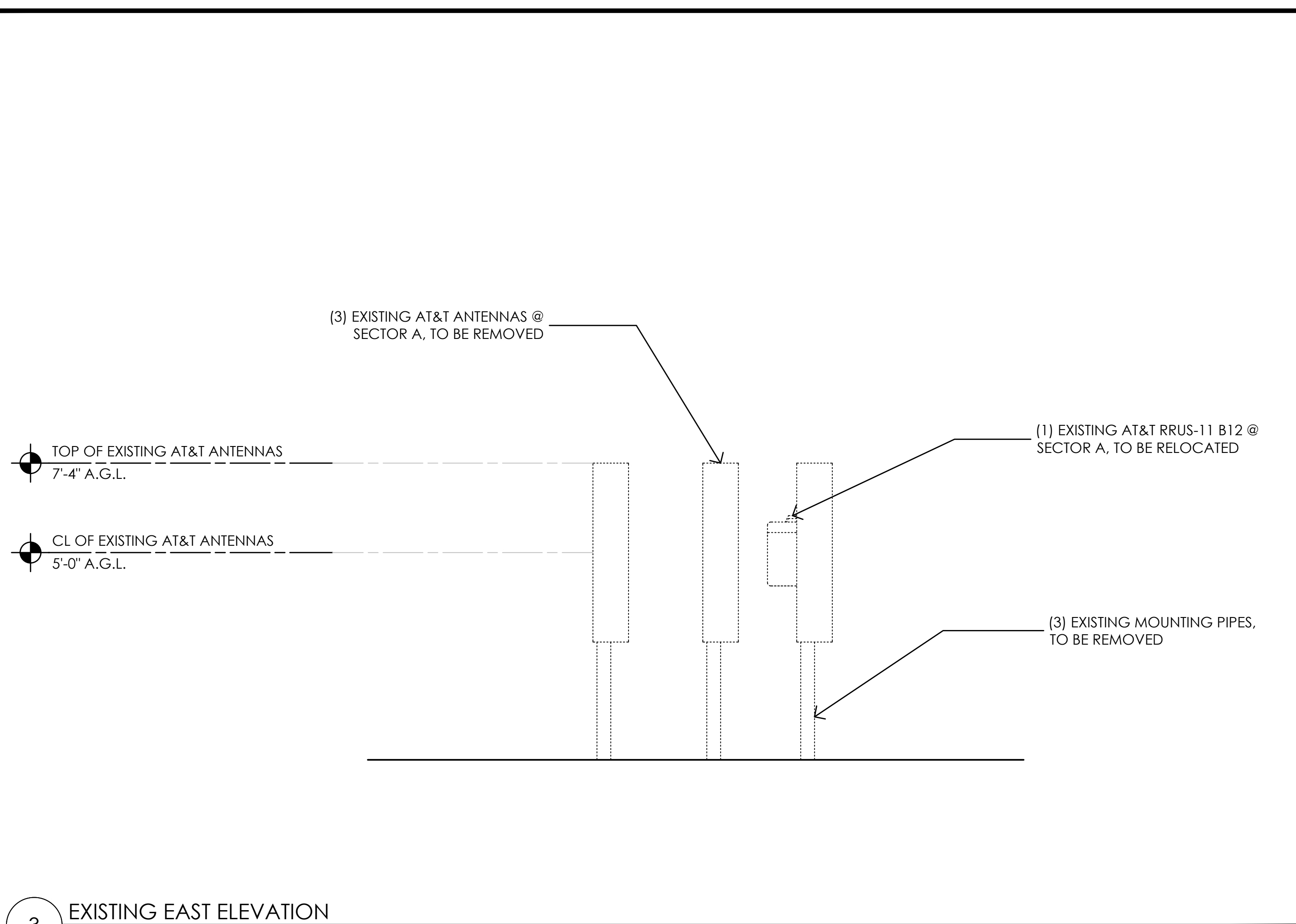
4) $\frac{DC \cdot SC}{1-1/2'' = 1'-0''}$



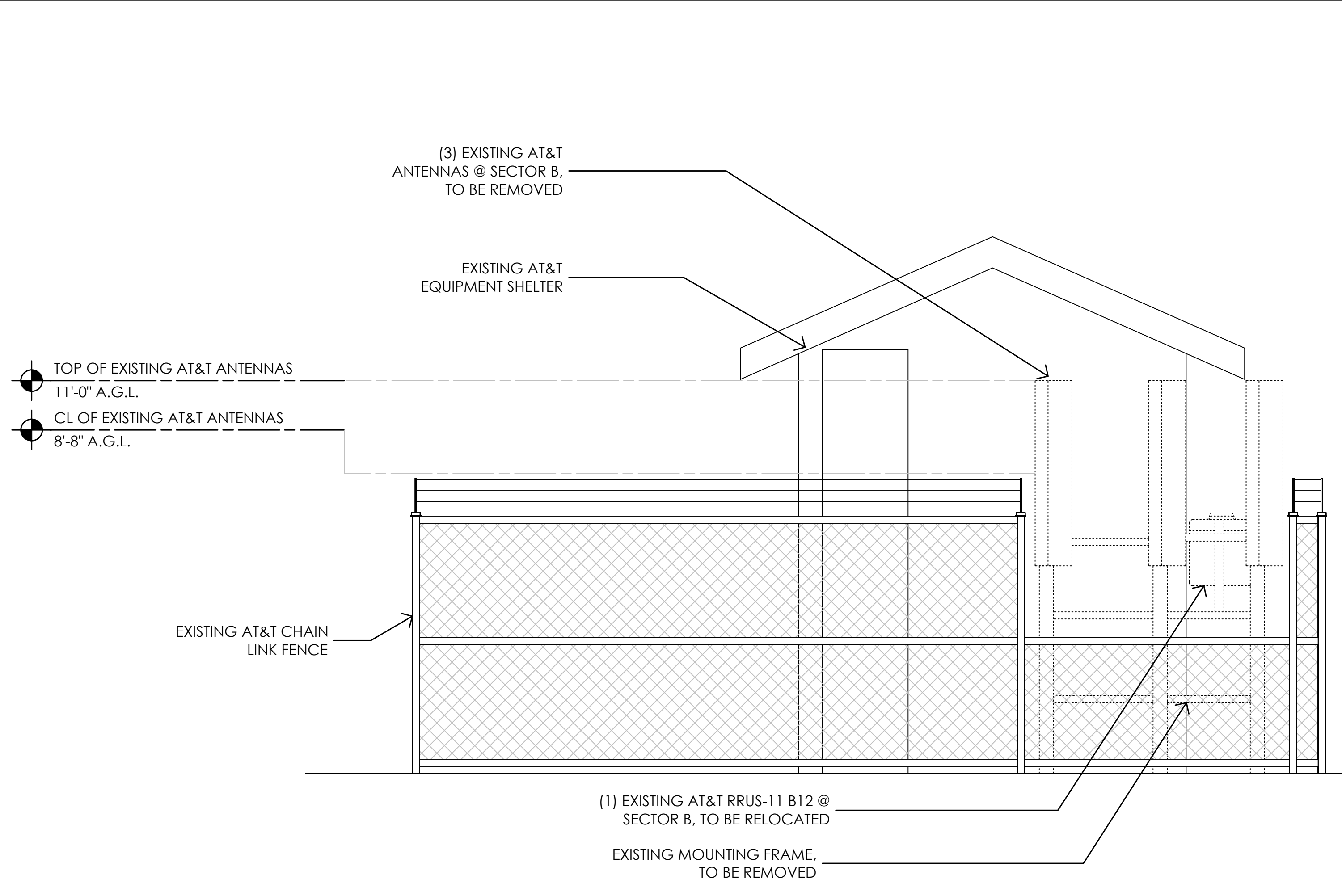
7) $\frac{CAD}{1'' = 1'-0''}$



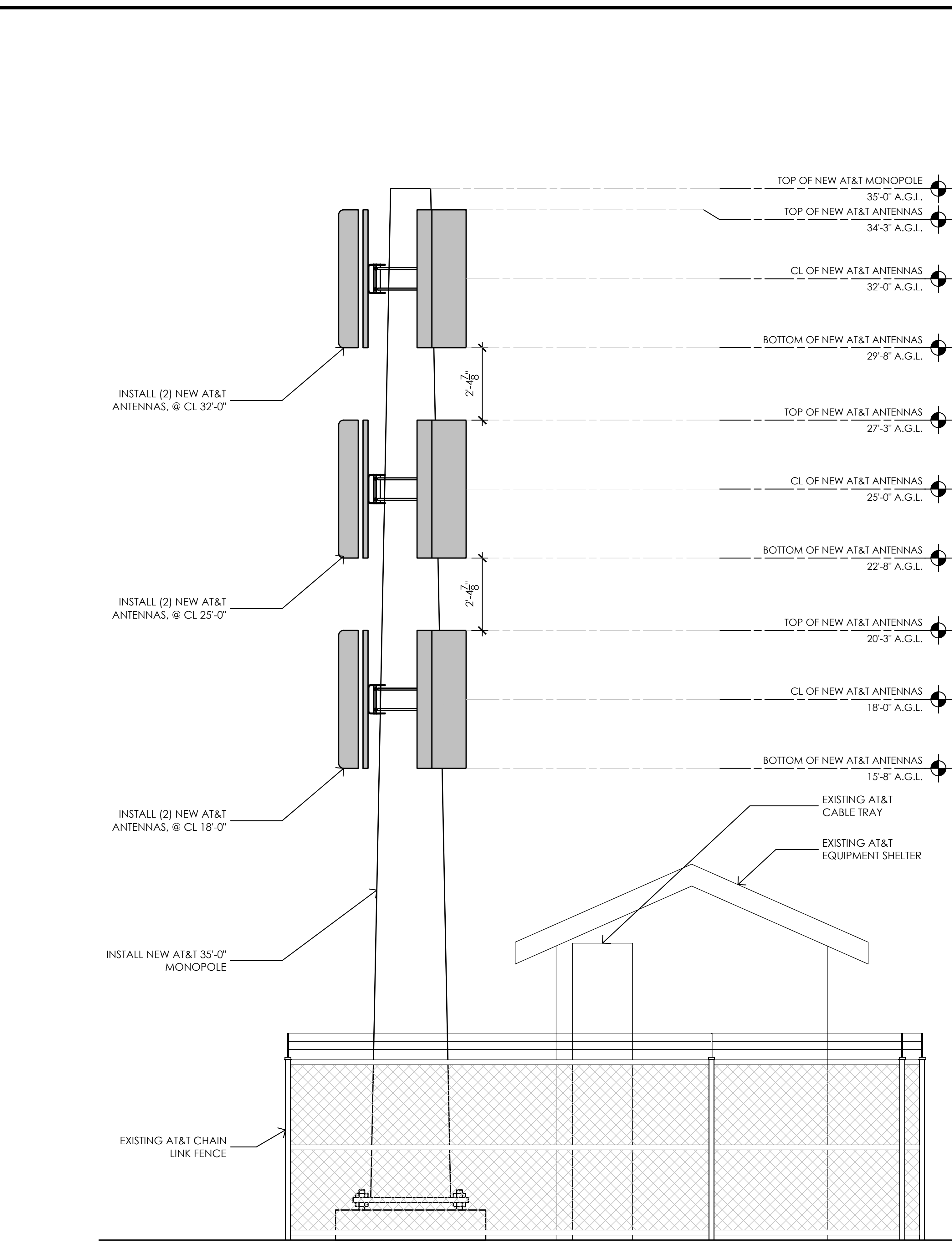
SHEET NUMBER:
A-3.1



3 EXISTING EAST ELEVATION
1/2" = 1'-0"



2 EXISTING NORTH ELEVATION
1/2" = 1'-0"



1 PROPOSED NORTH ELEVATION
1/2" = 1'-0"

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HWY 4 -
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CANYON ROAD
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Vendor:

AT&T SITE NO: CCL00093
PROJECT NO: 213.0953
DRAWN BY: CTC
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REV	DATE	DESCRIPTION
	06/01/20	100% CD
1	04/30/20	90% CD
	01/22/20	90% CD

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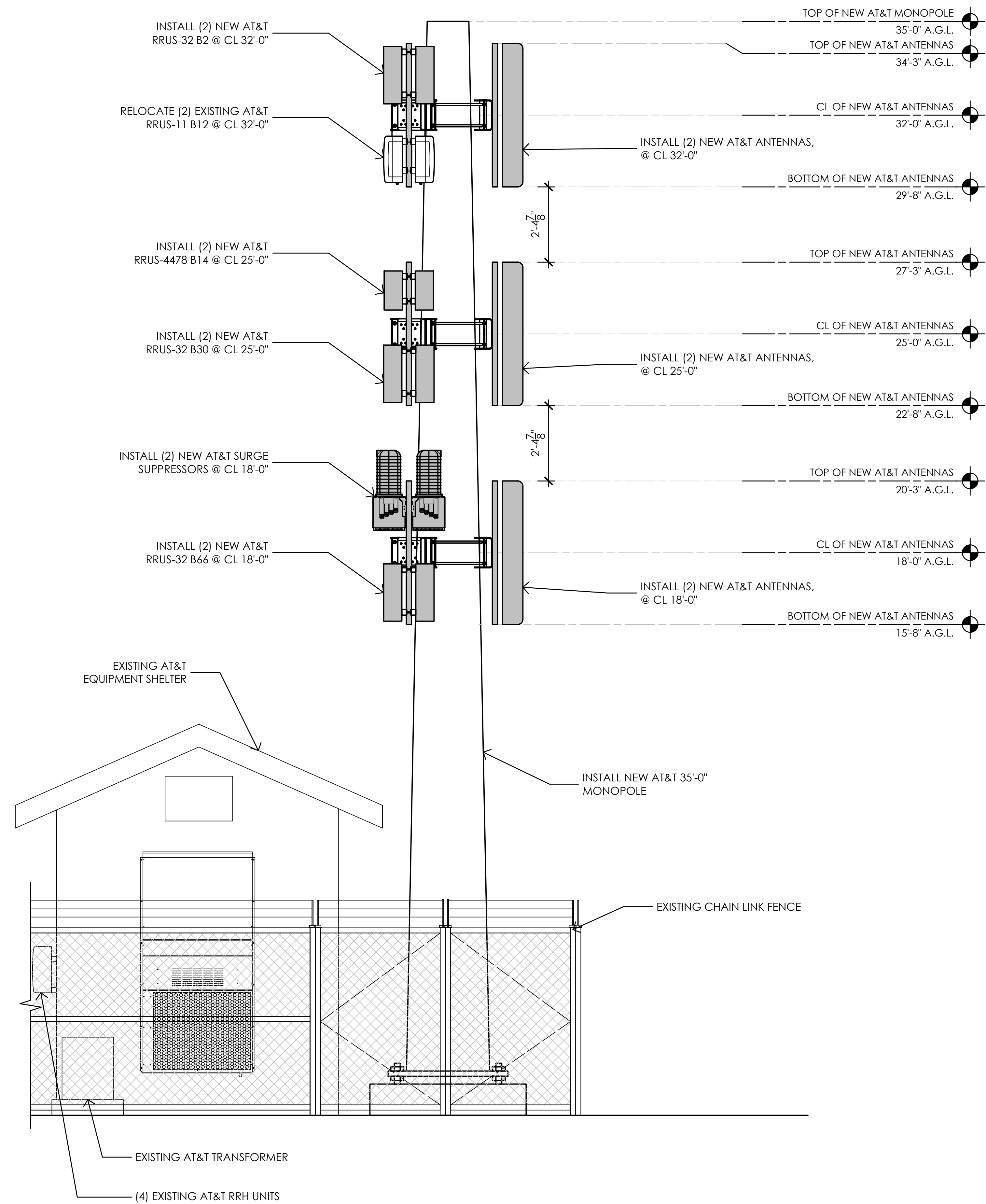
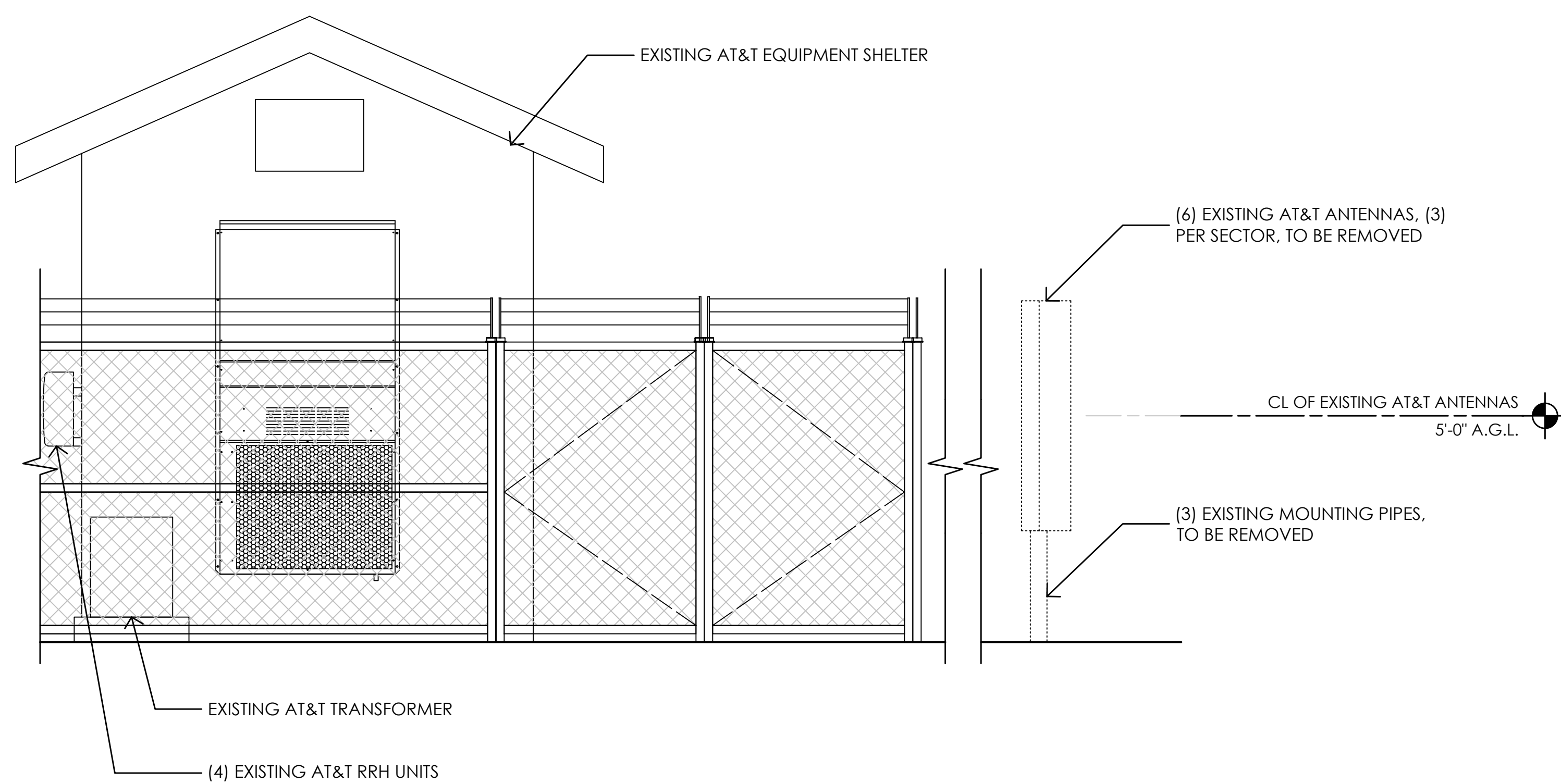
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Sacramento, California 95815


SHEET TITLE:
NORTH & EAST ELEVATIONS

SHEET NUMBER:
A-4.1



Issued For:
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HWY 4 -
HERCULES
3519 FRANKLIN
CANYON ROAD
HERCULES, CA 94547

PREPARED FOR

 **at&t**

5001 Executive Parkway
San Ramon, California 94583


Vendor:

 CROWN
CASTLE

AT&T SITE NO:	CCL00093
PROJECT NO:	213.0953
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CHECKED BY:	ALB

[illegible]

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Architect:



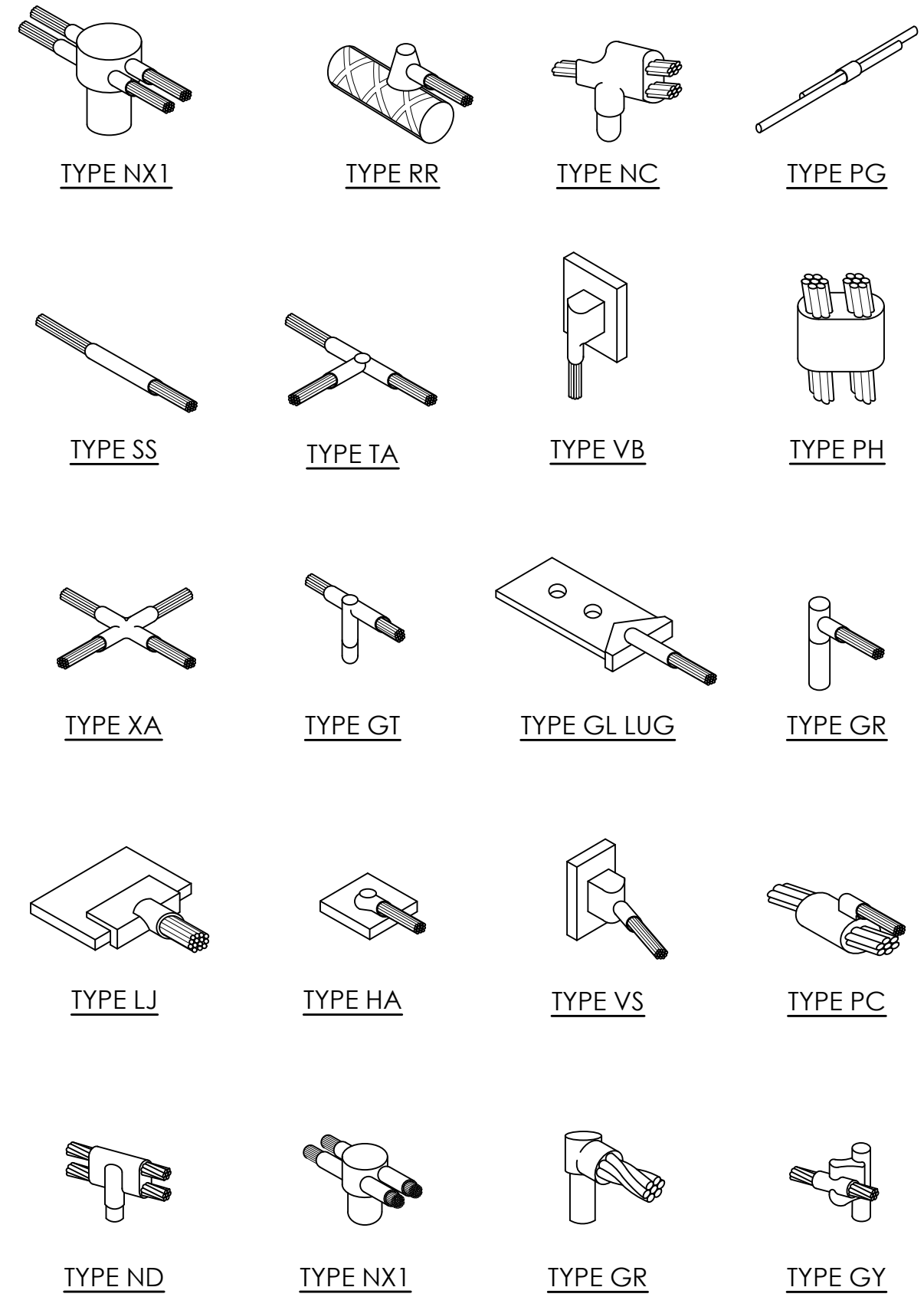
MST ARCHITECTS

1520 River Park Drive
Sacramento, California 95815

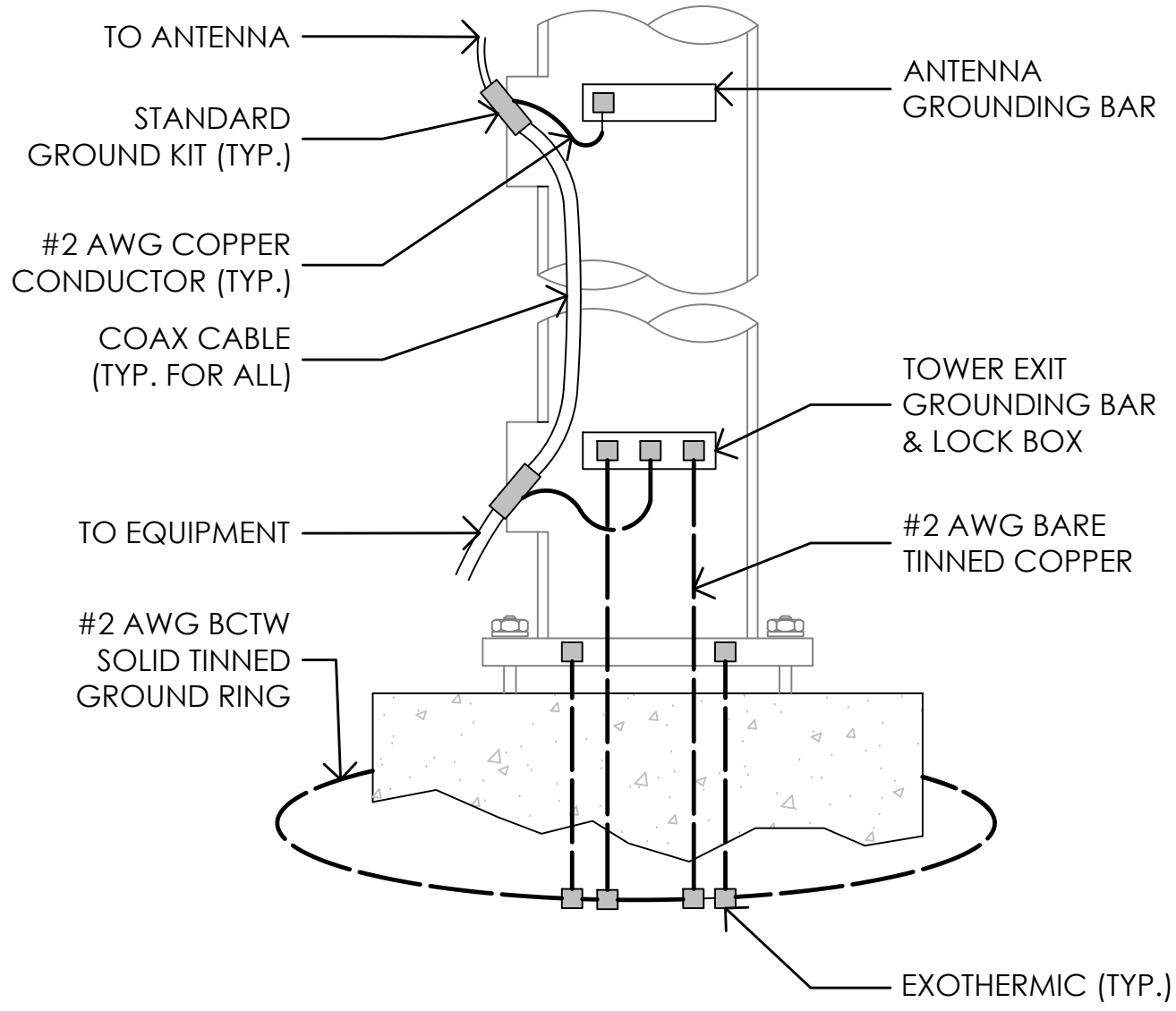
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SOUTH
ELEVATIONS

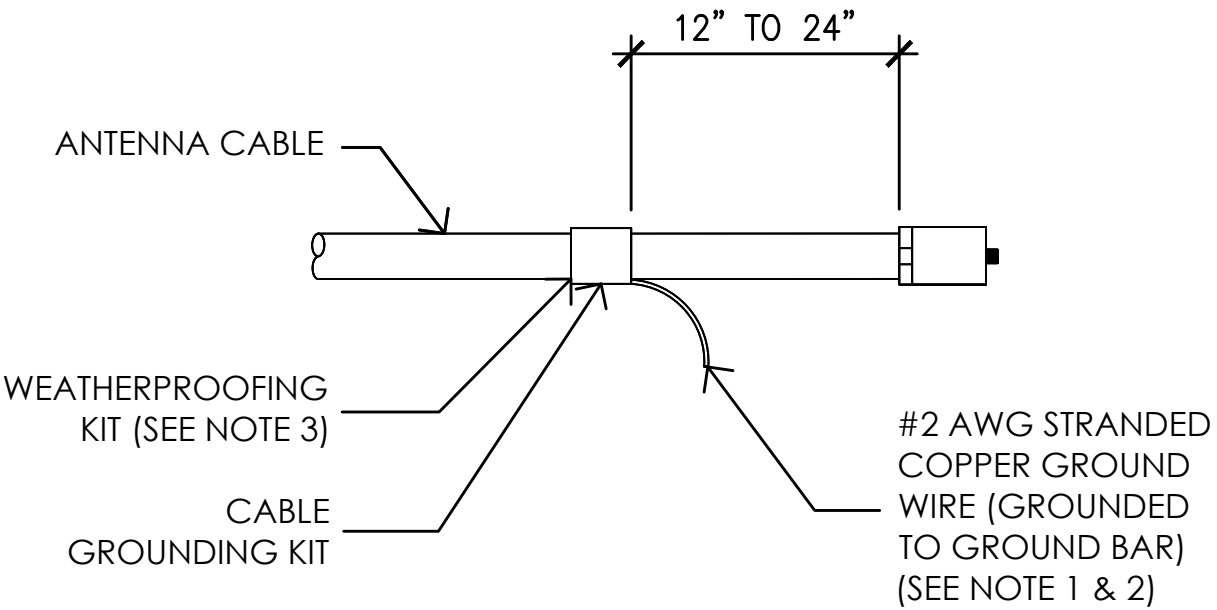
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TYPICAL CADWELD TYPE CONNECTIONS



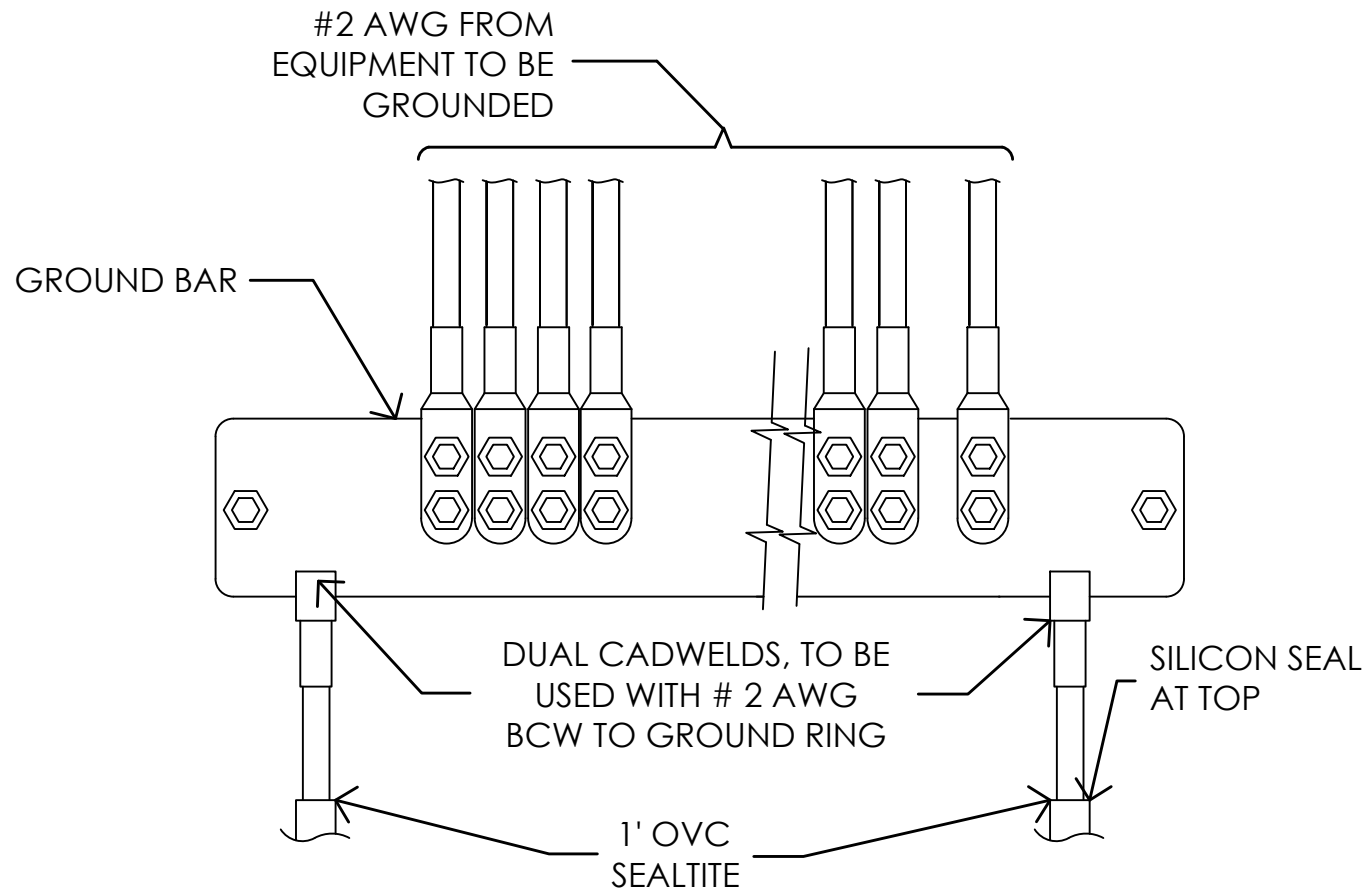
5 ANTENNA CABLE GROUNDING DETAIL
1/2" = 1'-0"



NOTES:

- DO NOT INSTALL CABLE GROUND KIT AT A BEND AND ALWAYS DIRECT WIRE DOWN TO GROUND BAR.
- GROUNDING KIT SHALL BE TYPE AND PART NUMBER AS SUPPLIED OR RECOMMENDED BY CABLE MANUFACTURER.
- WEATHER PROOFING SHALL BE (TYPE AND PART NUMBER AS SUPPLIED OR RECOMMENDED BY CABLE MANUFACTURER.)

4 CONNECTION OF GROUND KIT TO ANTENNA CABLE
1/2" = 1'-0"

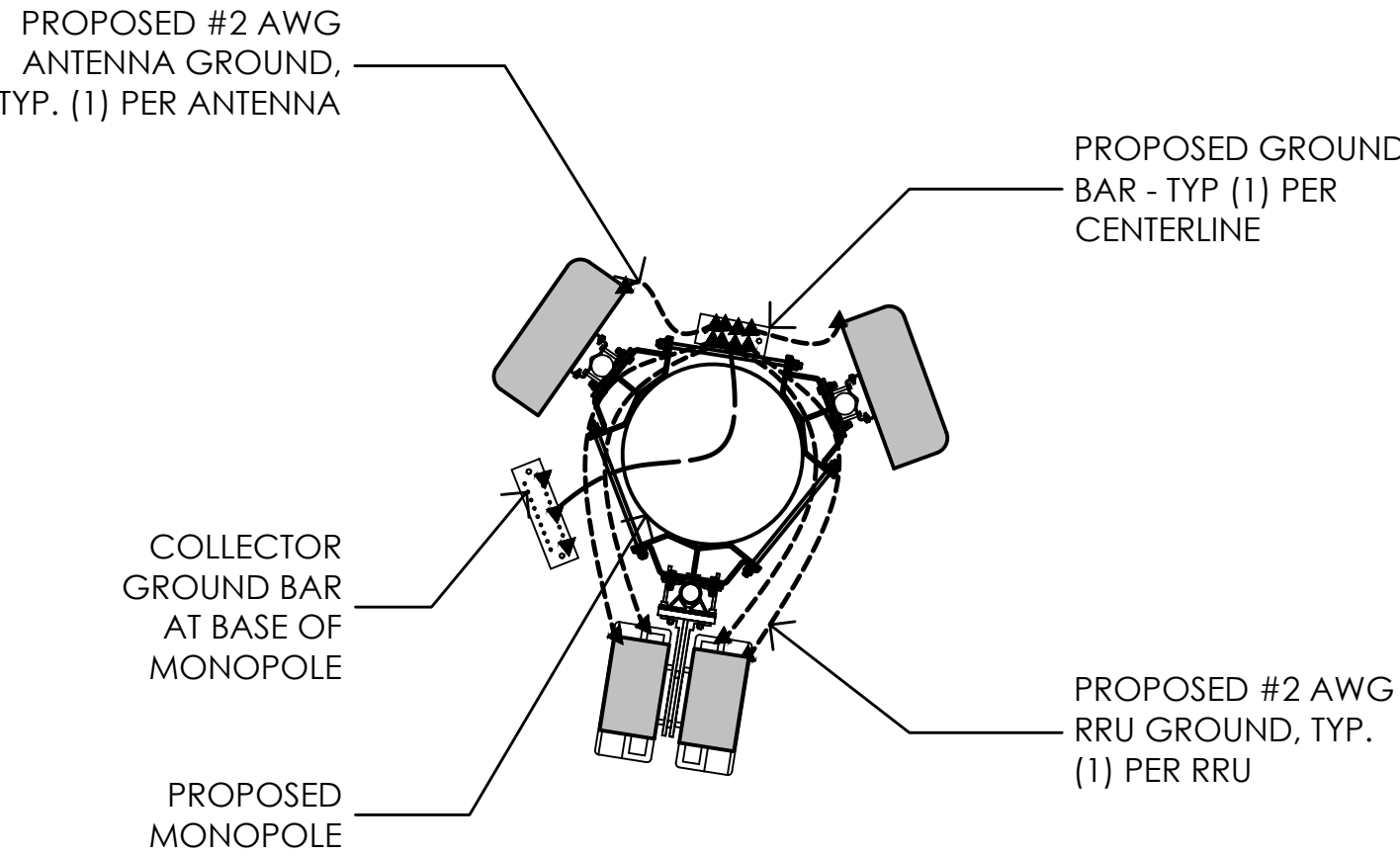


NOTES:

- CONTRACTOR TO UTILIZE KOPR-SHIELD (THANS & BETTS) ON ALL LUG CONNECTIONS OR APPROVED EQUAL
- ALL LUGS TO BE DUAL HOLE LONG BARREL AND CRIMPED TWICE WITH MFR'S RECOMMENDED TOOL

3 GROUND BAR CONNECTION DETAIL
1/2" = 1'-0"

- LEGEND
- GROUND RING
 - CADWELD CONNECTION (EXOTHERMIC WELD)
 - MECHANICAL CONNECTION



2 ANTENNA GROUNDING PLAN
1/2" = 1'-0"

- LEGEND
- GROUND RING
 - CADWELD CONNECTION (EXOTHERMIC WELD)
 - MECHANICAL CONNECTION

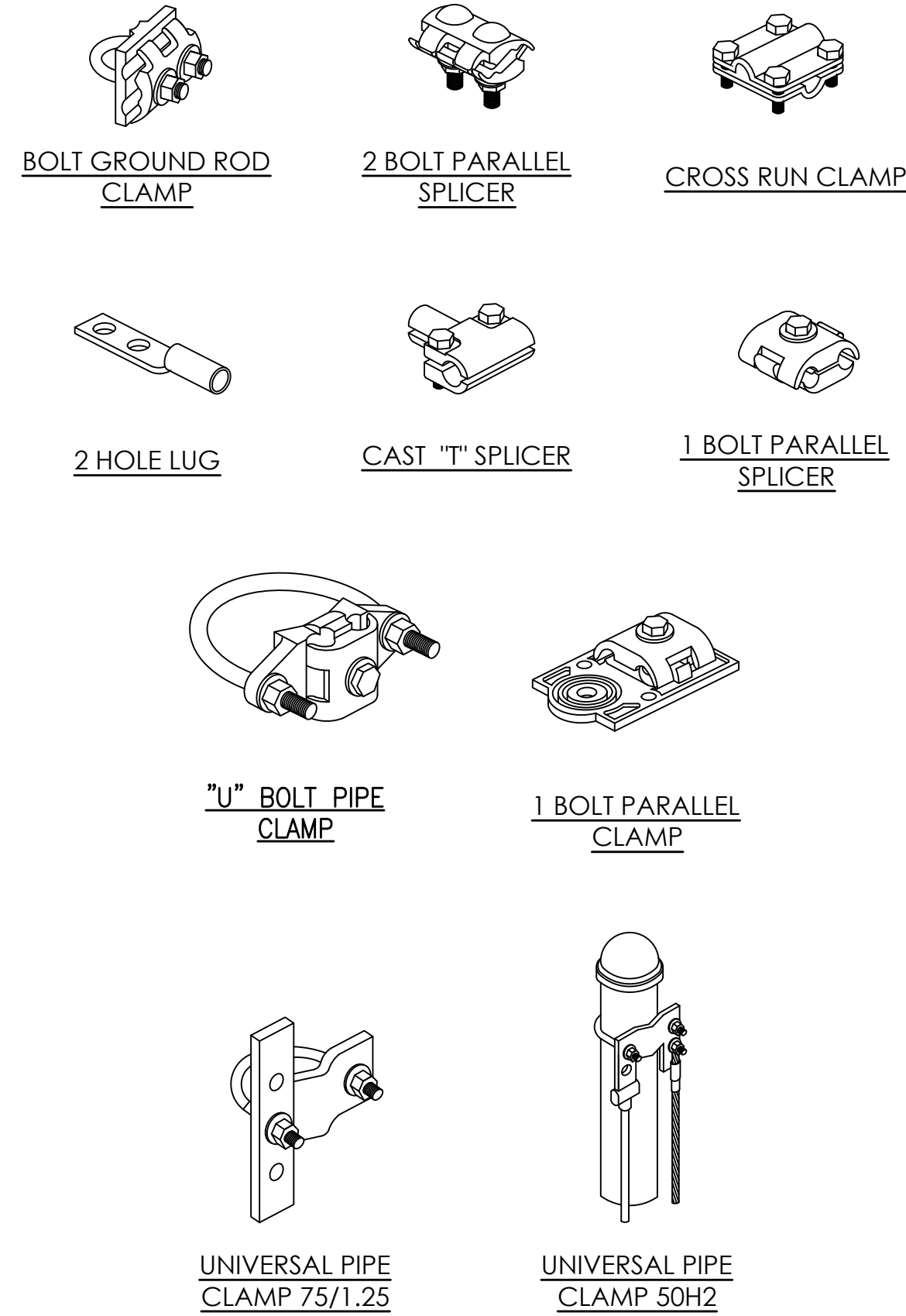
NOTES:

- GROUNDING IS SHOWN DIAGRAMMATICALLY ONLY.
- CONTRACTOR SHALL GROUND ALL EQUIPMENT AS A COMPLETE SYSTEM. GROUNDING SHALL BE IN COMPLIANCE WITH NEC SECTION 250 AND MANUFACTURER'S SPECIFICATIONS.
- ALL GROUND CONDUCTORS SHALL BE COPPER; NO ALUMINUM CONDUCTORS SHALL BE USED

1 EQUIPMENT GROUNDING DIAGRAM
1/2" = 1'-0"

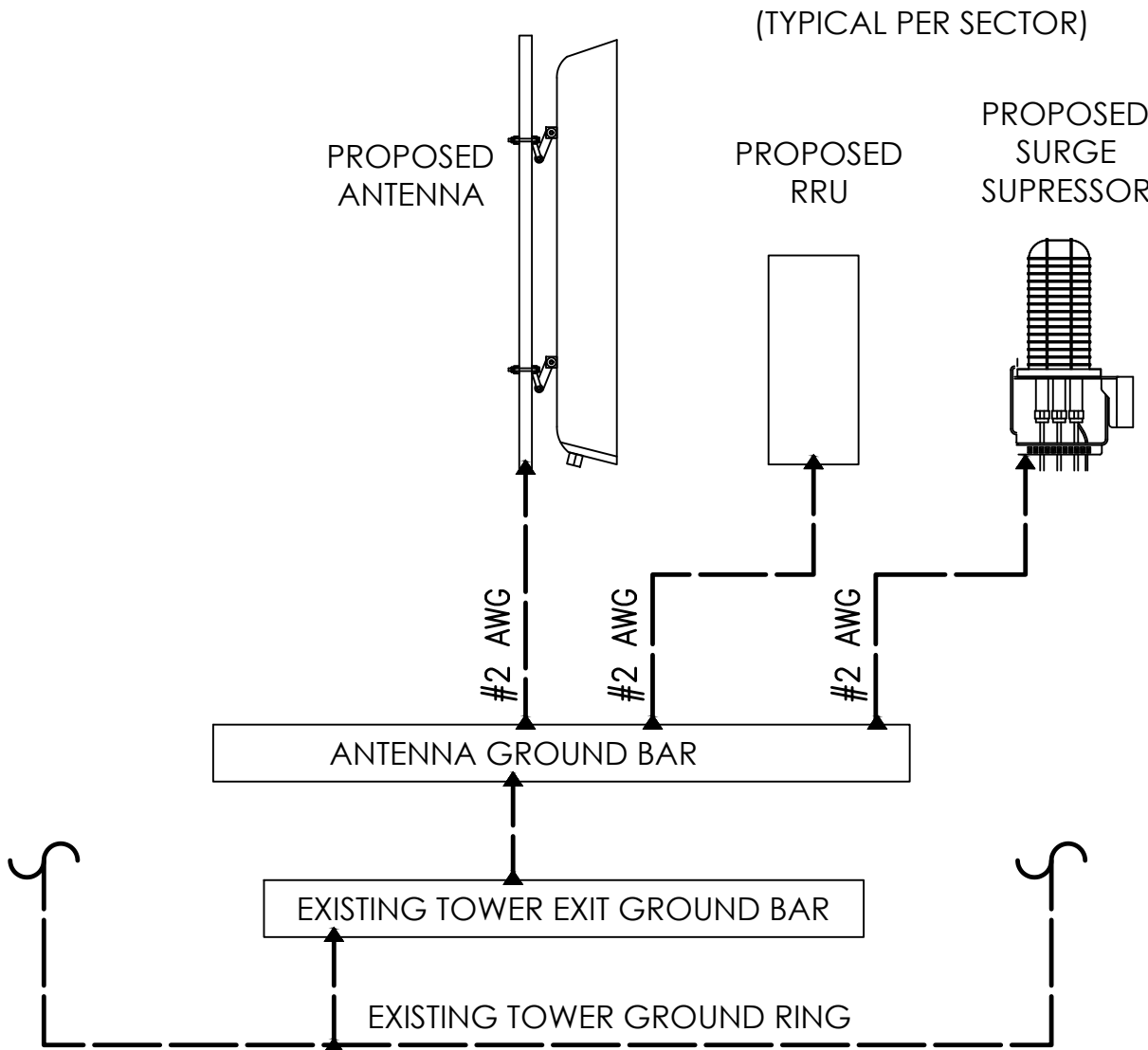
GROUNDING NOTES:

- ALL ELECTRICAL AND GROUNDING AT THE CELL SITE SHALL COMPLY WITH THE NATIONAL ELECTRICAL CODE (NEC), NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) 780 (LATEST EDITION), AND MANUFACTURER SPECIFICATION.
- IF THE AC PANEL IN THE POWER CABINET IS WIRED AS SERVICE ENTRANCE, THE AC SERVICE GROUND CONDUCTOR SHALL BE CONNECTED TO GROUND ELECTRODE SYSTEM. WHEN THE AC PANEL IN THE POWER CABINET IS CONSIDERED A SUB-PANEL, THE GROUND WIRE SHALL BE INSTALLED IN THE AC POWER CONDUIT. THE INSTALLATION SHALL BE PER LOCAL AND NATIONAL ELECTRIC CODE (NFPA-70).
- EXOTHERMIC WELDING IS RECOMMENDED FOR GROUNDING CONNECTION WHERE PRACTICAL. OTHERWISE, THE CONNECTION SHALL BE MADE USING COMPRESSION TYPE-2 HOLES. LONG BARREL LUGS OR DOUBLE CRIMP CLAMP "C" CLAMP. THE COPPER CABLES SHALL BE COATED WITH ANTIOXIDANT (COPPER SHIELD) BEFORE MAKING THE CONNECTIONS. THE MANUFACTURER'S TORQUING RECOMMENDATIONS ON THE BOLT ASSEMBLY TO SECURE CONNECTIONS SHALL BE FOLLOWED.
- THE ANTENNA CABLES SHALL BE GROUNDED AT THE TOP AND BOTTOM OF THE VERTICAL RUN FOR LIGHTING PROTECTION. THE ANTENNA CABLE SHIELD SHALL BE BONDED TO A COPPER GROUND BUSS AT THE LOWER MOST POINT OF A VERTICAL RUN JUST BEFORE IT BEGINS TO BEND TOWARD THE HORIZONTAL PLANE. WIRE RUNS TO GROUND SHALL BE KEPT AS STRAIGHT AND SHORT AS POSSIBLE. ANTENNA CABLE SHIELD SHALL BE GROUNDED JUST BEFORE ENTERING THE CELL CABINET. ANY ANTENNA CABLES OVER 200 FEET IN LENGTH SHALL ALSO BE EQUIPPED WITH ADDITIONAL GROUNDING AT MID-POINT.
- ALL GROUNDING CONDUCTORS INSIDE THE BUILDING SHALL BE RUN IN CONDUIT RACEWAY SYSTEM, AND SHALL BE INSTALLED AS STRAIGHT AS PRACTICAL WITH MINOR BENDS TO AVOID OBSTRUCTIONS. THE BENDING RADIUS OF ANY #2 GROUNDING CONDUCTOR IS 8". PVC RACEWAY MAY BE FLEXIBLE OR RIGID PER THE FIELD CONDITIONS. GROUNDING CONDUCTORS SHALL NOT MAKE CONTACT WITH ANY METALLIC CONDUITS, SURFACES OR EQUIPMENT.
- PROVIDE PVC SLEEVES WHERE GROUNDING CONDUCTORS PASS THROUGH THE BUILDING WALLS AND /OR CEILINGS.
- INSTALL GROUND BUSHINGS ON ALL METALLIC CONDUITS AND BOND TO THE EQUIPMENT GROUND BUSS IN THE PANEL BOARD.
- GROUND ANTENNA BASES, FRAMES, CABLE RACKS AND OTHER METALLIC COMPONENTS WITH #2 GROUNDING CONDUCTORS AND CONNECT TO INSULATED SURFACE MOUNTED GROUND BARS. CONNECTION DETAILS SHALL FOLLOW MANUFACTURER'S SPECIFICATIONS FOR GROUNDING.
- ALL PROPOSED GROUNDING CONDUCTORS SHALL BE ROUTED AND CONNECTED TO THE MAIN GROUND BAR OR EXISTING GROUND RING.



TYPICAL MECHANICAL TYPE CONNECTIONS

6 TYPICAL GROUNDING CONNECTIONS
1/2" = 1'-0"



Issued For:
CCL00093
HWY 4 -
HERCULES

3519 FRANKLIN
CANYON ROAD
HERCULES, CA 94547

PREPARED FOR

5001 Executive Parkway
San Ramon, California 94583

Vendor:

AT&T SITE NO: CCL00093
PROJECT NO: 213.0953
DRAWN BY: CTC
CHECKED BY: ALB

REV	DATE	DESCRIPTION
1	06/01/20	100% CD
	04/30/20	90% CD
	01/22/20	90% CD

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Architect:

1520 River Park Drive
Sacramento, California 95815

SHEET TITLE:
**GROUNDING
PLAN & DETAILS**

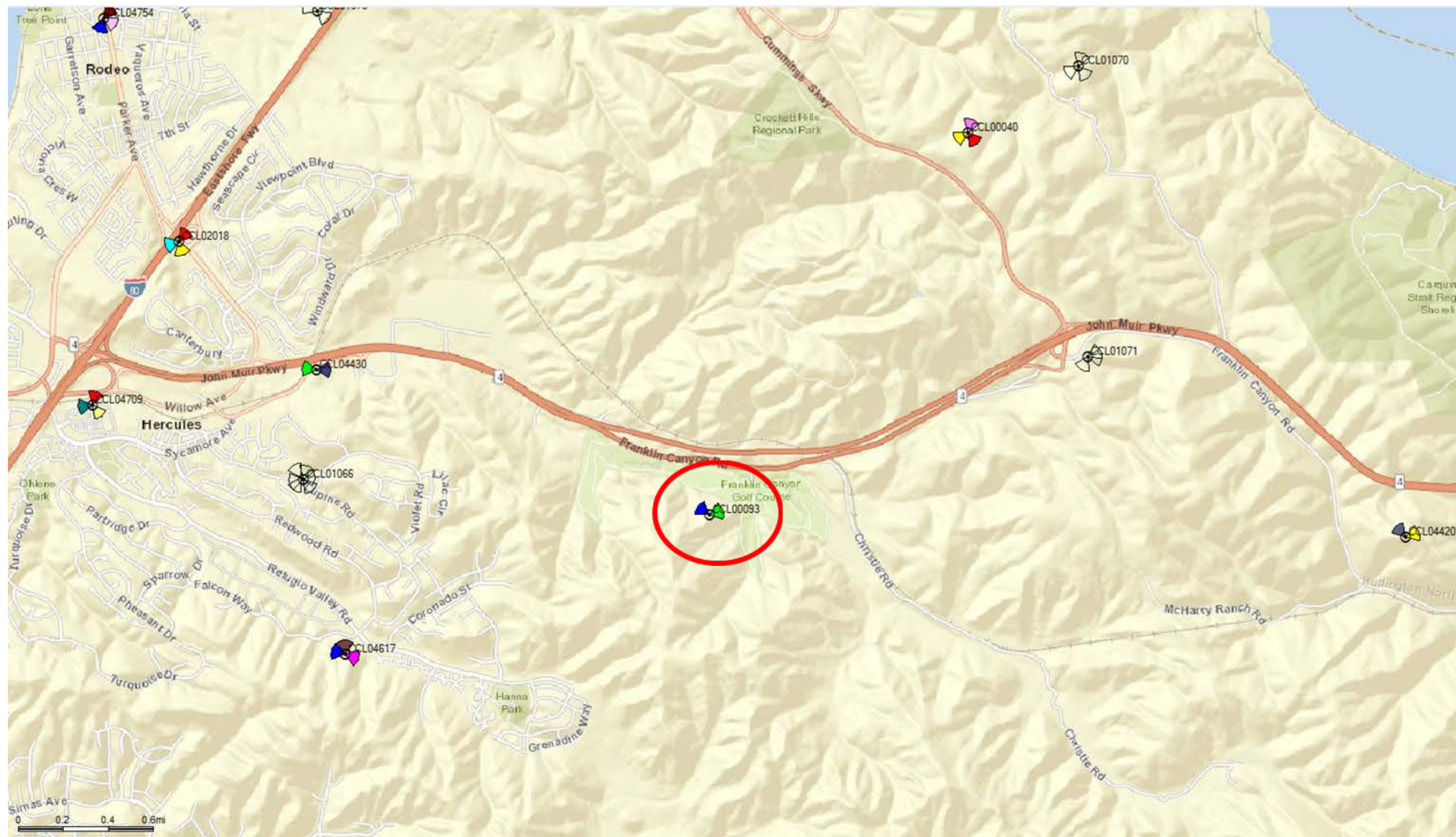
SHEET NUMBER:
E-1.1

CCL00093

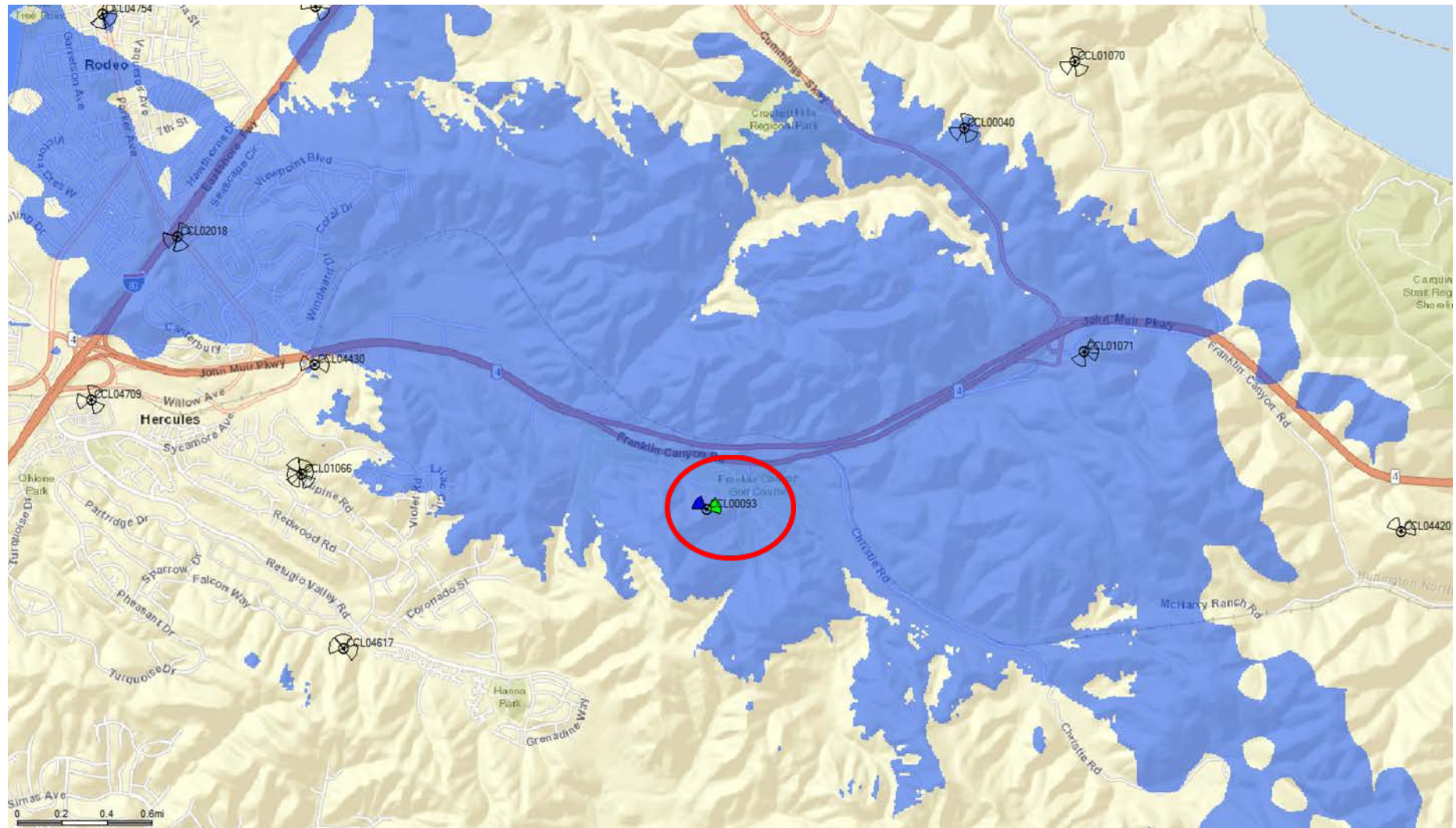
Propagation Map

Aug 18, 2020

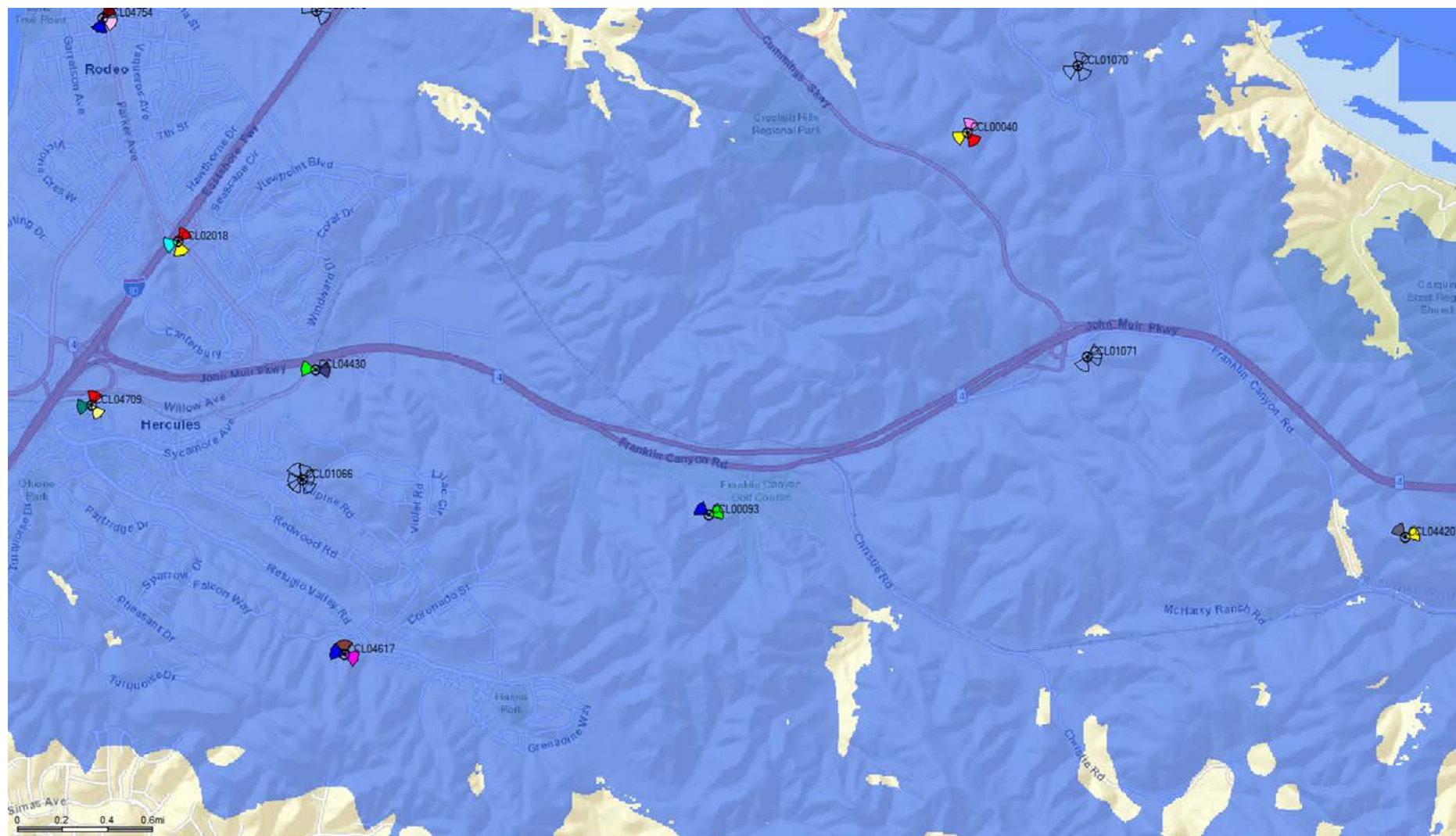
Site Objective: To help improve LTE Services on the area around the proposed site modifications.



LTE 4G Service Coverage - CCL00093 Existing



LTE 4G Service Coverage CCL00093 with Neighbors



CCL00093 – RF STATEMENT

The proposed modification at **3519 FRANKLIN CANYON ROAD, CONTRA COSTA COUNTY, HERCULES, CA 94547**, is necessary in order to improve the coverage and capacity of the existing 4G LTE network. Currently the site is configured as a One LTE carrier (channel) base station. This means that the potential performance of the 4G LTE network was currently not realized. This is especially impactful for those who rely on the ATT network for broadband data services and who increasingly use their mobile phones as their primary communication device (landlines to residences have decreased significantly) and rely on their mobile phones to do more (E911, GPS, web access, text, etc.). The proposed modification will provide substantial improvement in service to residents in the area that will allow them to fully experience the advantage of ATT's high speed 4G LTE .

4G LTE is capable of delivering speeds up to 10 times faster than industry-average 3G speeds. LTE technology also offers lower latency, or the processing time it takes to move data through a network, such as how long it takes to start downloading a webpage or file once you've sent the request. Lower latency helps to improve the quality of personal wireless services. What's more, LTE uses spectrum more efficiently than other technologies, creating more space to carry data traffic and services and to deliver a better overall network experience. AT&T designs and builds and expands its wireless network as necessary to satisfy its customer service standards, which ensure customers receive reliable high speed data.

Radio Frequency – Electromagnetic Energy (RF-EME) Compliance Report

Site No. CCL00093
MRSFR041811/ MRSFR040173/ MRSFR041265/ MRSFR041531
Hwy 4 - Hercules
3519 Franklin Canyon Road
Hercules, California 94547
Contra Costa County
38.004267; -122.219212 NAD83
Monopole

**The proposed AT&T installation will be in compliance with FCC regulations
upon proper installation of recommended signage.**

EBI Project No. 6220002043
May 8, 2020



Prepared for:
AT&T Mobility, LLC
c/o Ericsson, Inc.
6160 Stoneridge Mall Rd #400
Pleasanton, CA 94588

Prepared by:
 **EBI Consulting**
environmental | engineering | due diligence

TABLE OF CONTENTS

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2.0 AT&T RF EXPOSURE POLICY REQUIREMENTS	5
3.0 WORST-CASE PREDICTIVE MODELING.....	5
4.0 RECOMMENDED SIGNAGE/COMPLIANCE PLAN	7
5.0 SUMMARY AND CONCLUSIONS.....	8
6.0 LIMITATIONS	8

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Appendix A Personnel Certifications	
Appendix B Compliance/Signage Plan	

EXECUTIVE SUMMARY

Purpose of Report

EnviroBusiness Inc. (dba EBI Consulting) has been contracted by AT&T Mobility, LLC to conduct radio frequency electromagnetic (RF-EME) modeling for AT&T Site CCL00093 located at 3519 Franklin Canyon Road in Hercules, California to determine RF-EME exposure levels from proposed AT&T wireless communications equipment at this site. As described in greater detail in Section 1.0 of this report, the Federal Communications Commission (FCC) has developed Maximum Permissible Exposure (MPE) Limits for general public exposures and occupational exposures. This report summarizes the results of RF-EME modeling in relation to relevant FCC RF-EME compliance standards for limiting human exposure to RF-EME fields.

This report contains the RF EME analysis for the site, including the following:

- Site Plan with antenna locations
- Graphical representation of theoretical MPE fields based on modeling
- Graphical representation of recommended signage and/or barriers

This document addresses the compliance of AT&T's transmitting facilities independently and in relation to all collocated facilities at the site.

Statement of Compliance

A site is considered out of compliance with FCC regulations if there are areas that exceed the FCC exposure limits and there are no RF hazard mitigation measures in place. Any carrier which has an installation that contributes more than 5% of the applicable MPE must participate in mitigating these RF hazards.

As presented in the sections below, based on worst-case predictive modeling, there are no modeled exposures on any accessible ground walking/working surface related to ATT's proposed antennas that exceed the FCC's occupational and/or general public exposure limits at this site. Additionally, there are areas where elevated workers may be exposed to power densities greater than the occupational limits. The worst-case emitted power density may exceed the FCC's occupational limit within approximately 13 feet of AT&T's proposed antennas at the antenna face level. Workers and the general public should be informed about the presence and locations of antennas and their associated fields.

As such, the proposed AT&T installation is in compliance with FCC regulations upon proper installation of recommended signage and/or barriers.

AT&T Recommended Signage/Compliance Plan

AT&T's RF Exposure: Responsibilities, Procedures & Guidelines document, dated October 28, 2014, requires that:

1. All sites must be analyzed for RF exposure compliance;
2. All sites must have that analysis documented; and
3. All sites must have any necessary signage and barriers installed.

Site compliance recommendations have been developed based upon protocols presented in AT&T's RF Exposure: Responsibilities, Procedures & Guidelines document, dated October 28, 2014, additional guidance provided by AT&T, EBI's understanding of FCC and OSHA requirements, and common

industry practice. Barrier locations have been identified (when required) based on guidance presented in AT&T's RF Exposure: Responsibilities, Procedures & Guidelines document, dated October 28, 2014.

The following signage is recommended at this site:

- Yellow CAUTION 2B sign posted at the base of the monopole.

The signage proposed for installation at this site complies with AT&T's RF Exposure: Responsibilities, Procedures & Guidelines document and therefore complies with FCC and OSHA requirements. Barriers are not recommended on this site. More detailed information concerning site compliance recommendations is presented in Section 4.0 and Appendix B of this report.

I.0 FEDERAL COMMUNICATIONS COMMISSION (FCC) REQUIREMENTS

The FCC has established Maximum Permissible Exposure (MPE) limits for human exposure to Radiofrequency Electromagnetic (RF-EME) energy fields, based on exposure limits recommended by the National Council on Radiation Protection and Measurements (NCRP) and, over a wide range of frequencies, the exposure limits developed by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) and adopted by the American National Standards Institute (ANSI) to replace the 1982 ANSI guidelines. Limits for localized absorption are based on recommendations of both ANSI/IEEE and NCRP.

The FCC guidelines incorporate two separate tiers of exposure limits that are based upon occupational/controlled exposure limits (for workers) and general public/uncontrolled exposure limits for members of the general public.

Occupational/controlled exposure limits apply to situations in which persons are exposed as a consequence of their employment and in which those persons who are exposed have been made fully aware of the potential for exposure and can exercise control over their exposure. Occupational/controlled exposure limits also apply where exposure is of a transient nature as a result of incidental passage through a location where exposure levels may be above general public/uncontrolled limits (see below), as long as the exposed person has been made fully aware of the potential for exposure and can exercise control over his or her exposure by leaving the area or by some other appropriate means.

General public/uncontrolled exposure limits apply to situations in which the general public may be exposed or in which persons who are exposed as a consequence of their employment may not be made fully aware of the potential for exposure or cannot exercise control over their exposure. Therefore, members of the general public would always be considered under this category when exposure is not employment-related, for example, in the case of a telecommunications tower that exposes persons in a nearby residential area.

Table I and Figure I (below), which are included within the FCC's OET Bulletin 65, summarize the MPE limits for RF emissions. These limits are designed to provide a substantial margin of safety. They vary by frequency to take into account the different types of equipment that may be in operation at a particular facility and are "time-averaged" limits to reflect different durations resulting from controlled and uncontrolled exposures.

The FCC's MPEs are measured in terms of power (mW) over a unit surface area (cm²). Known as the power density, the FCC has established an occupational MPE of 5 milliwatts per square centimeter (mW/cm²) and an uncontrolled MPE of 1 mW/cm² for equipment operating in the 1900 MHz frequency range. For the AT&T equipment operating at 850 MHz, the FCC's occupational MPE is 2.83 mW/cm² and an uncontrolled MPE of 0.57 mW/cm². For the AT&T equipment operating at 700 MHz, the FCC's occupational MPE is 2.33 mW/cm² and an uncontrolled MPE of 0.47 mW/cm². These limits are considered protective of these populations.

Table I: Limits for Maximum Permissible Exposure (MPE)				
(A) Limits for Occupational/Controlled Exposure				
Frequency Range (MHz)	Electric Field Strength (E) (V/m)	Magnetic Field Strength (H) (A/m)	Power Density (S) (mW/cm ²)	Averaging Time [E] ² , [H] ² , or S (minutes)
0.3-3.0	614	1.63	(100)*	6
3.0-30	1842/f	4.89/f	(900/f ²)*	6
30-300	61.4	0.163	1.0	6
300-1,500	--	--	f/300	6
1,500-100,000	--	--	5	6

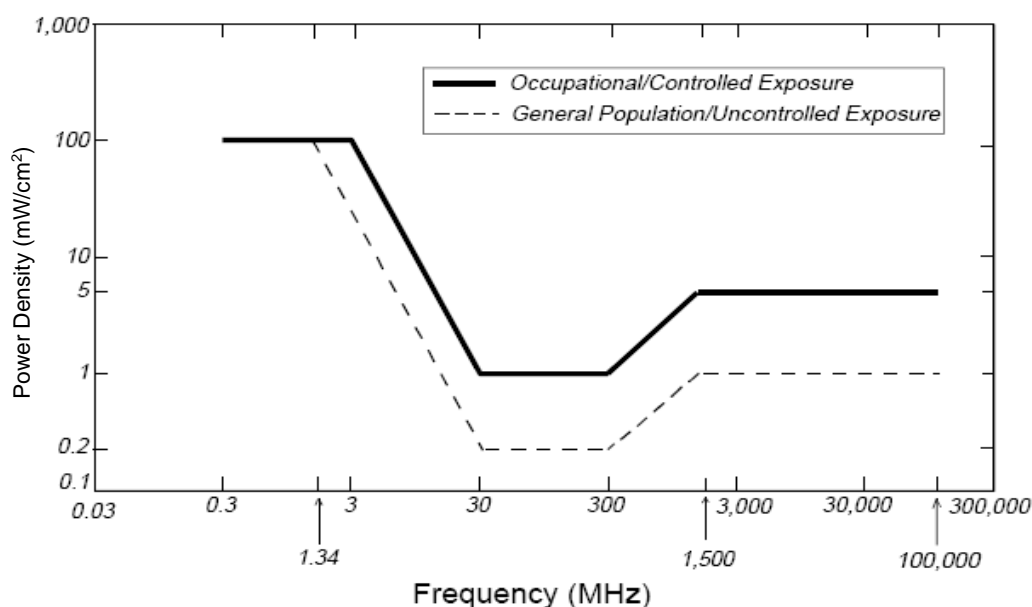
(B) Limits for General Public/Uncontrolled Exposure				
Frequency Range (MHz)	Electric Field Strength (E) (V/m)	Magnetic Field Strength (H) (A/m)	Power Density (S) (mW/cm²)	Averaging Time [E]², [H]², or S (minutes)
0.3-1.34	614	1.63	(100)*	30
1.34-30	824/f	2.19/f	(180/f ²)*	30
30-300	27.5	0.073	0.2	30
300-1,500	--	--	f/1,500	30
1,500-100,000	--	--	1.0	30

f = Frequency in (MHz)

* Plane-wave equivalent power density

Figure 1. FCC Limits for Maximum Permissible Exposure (MPE)

Plane-wave Equivalent Power Density



Based on the above, the most restrictive thresholds for exposures of unlimited duration to RF energy for several personal wireless services are summarized below:

Personal Wireless Service	Approximate Frequency	Occupational MPE	Public MPE
Microwave (Point-to-Point)	5,000 - 80,000 MHz	5.00 mW/cm ²	1.00 mW/cm ²
Broadband Radio (BRS)	2,600 MHz	5.00 mW/cm ²	1.00 mW/cm ²
Wireless Communication (WCS)	2,300 MHz	5.00 mW/cm ²	1.00 mW/cm ²
Advanced Wireless (AWS)	2,100 MHz	5.00 mW/cm ²	1.00 mW/cm ²
Personal Communication (PCS)	1,950 MHz	5.00 mW/cm ²	1.00 mW/cm ²
Cellular Telephone	870 MHz	2.90 mW/cm ²	0.58 mW/cm ²
Specialized Mobile Radio (SMR)	855 MHz	2.85 mW/cm ²	0.57 mW/cm ²
Long Term Evolution (LTE)	700 MHz	2.33 mW/cm ²	0.47 mW/cm ²
Most Restrictive Frequency Range	30-300 MHz	1.00 mW/cm ²	0.20 mW/cm ²

MPE limits are designed to provide a substantial margin of safety. These limits apply for continuous exposures and are intended to provide a prudent margin of safety for all persons, regardless of age, gender, size, or health.

Personal Communication (PCS) facilities used by AT&T in this area operate within a frequency range of 700-1900 MHz. Facilities typically consist of: 1) electronic transceivers (the radios or cabinets) connected to wired telephone lines; and 2) antennas that send the wireless signals created by the transceivers to be received by individual subscriber units (PCS telephones). Transceivers are typically connected to antennas by coaxial cables.

Because of the short wavelength of PCS services, the antennas require line-of-site paths for good propagation, and are typically installed above ground level. Antennas are constructed to concentrate energy towards the horizon, with as little energy as possible scattered towards the ground or the sky. This design, combined with the low power of PCS facilities, generally results in no possibility for exposure to approach Maximum Permissible Exposure (MPE) levels, with the exception of areas directly in front of the antennas.

2.0 AT&T RF EXPOSURE POLICY REQUIREMENTS

AT&T's RF Exposure: Responsibilities, Procedures & Guidelines document, dated October 28, 2014, requires that:

1. All sites must be analyzed for RF exposure compliance;
2. All sites must have that analysis documented; and
3. All sites must have any necessary signage and barriers installed.

Pursuant to this guidance, worst-case predictive modeling was performed for the site. This modeling is described below in Section 3.0. Lastly, based on the modeling and survey data, EBI has produced a Compliance Plan for this site that outlines the recommended signage and barriers. The recommended Compliance Plan for this site is described in Section 4.0.

3.0 WORST-CASE PREDICTIVE MODELING

In accordance with AT&T's RF Exposure policy, EBI performed theoretical modeling using RoofMaster™ software to estimate the worst-case power density at the site ground-level and/or nearby rooftops resulting from operation of the antennas. RoofMaster™ is a widely-used predictive modeling program that has been developed to predict RF power density values for rooftop and tower telecommunications sites produced by vertical collinear antennas that are typically used in the cellular, PCS, paging and other communications services. Using the computational methods set forth in Federal Communications (FCC) Office of Engineering & Technology (OET) Bulletin 65, "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields" (OET-65), RoofMaster™ calculates predicted power density in a scalable grid based on the contributions of all RF sources characterized in the study scenario. At each grid location, the cumulative power density is expressed as a percentage of the FCC limits. Manufacturer antenna pattern data is utilized in these calculations. RoofMaster™ models consist of the Far Field model as specified in OET-65 and an implementation of the OET-65 Cylindrical Model (Sula9). The models utilize several operational specifications for different types of antennas to produce a plot of spatially-averaged power densities that can be expressed as a percentage of the applicable exposure limit.

For this report, EBI utilized antenna and power data provided by AT&T and compared the resultant worst-case MPE levels to the FCC's occupational/controlled exposure limits outlined in OET Bulletin 65.

The assumptions used in the modeling are based upon information provided by AT&T and information gathered from other sources. There are no other wireless carriers with equipment installed at this site.

Based on worst-case predictive modeling, there are no modeled exposures on any accessible ground walking/working surface related to ATT's proposed antennas that exceed the FCC's occupational and/or general public exposure limits at this site. Additionally, there are areas where elevated workers may be

exposed to power densities greater than the occupational limits. The worst-case emitted power density may exceed the FCC's occupational limit within approximately 13 feet of AT&T's proposed antennas at the antenna face level. Workers and the general public should be informed about the presence and locations of antennas and their associated fields.

At the nearest walking/working surfaces to the AT&T antennas on the ground, the maximum power density generated by the AT&T antennas is approximately 3.20 percent of the FCC's general public limit (0.64 percent of the FCC's occupational limit). The composite exposure level from all carriers on this site is approximately 3.20 percent of the FCC's general public limit (0.64 percent of the FCC's occupational limit) at the nearest walking/working surface to each antenna.

A graphical representation of the RoofMaster™ modeling results is presented in Appendix B.

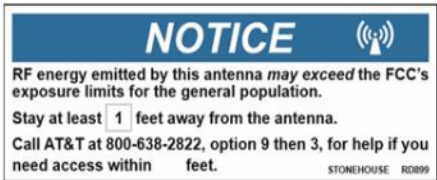

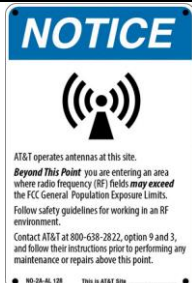

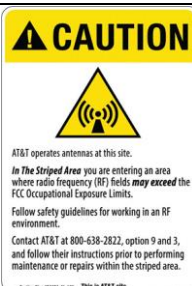




Microwave dish antennas are designed for point-to-point operations at the elevations of the installed equipment rather than ground-level coverage. Based on AT&T's RF Exposure: Responsibilities, Procedures & Guidelines document, dated October 28, 2014, microwave antennas are considered compliant if they are higher than 20 feet above any accessible walking/working surface. There are no microwaves installed at this site.

4.0 RECOMMENDED SIGNAGE/COMPLIANCE PLAN

Signs are the primary means for control of access to areas where RF exposure levels may potentially exceed the MPE. As presented in the AT&T guidance document, the signs must:

- Be posted at a conspicuous point;
- Be posted at the appropriate locations;
- Be readily visible; and
- Make the reader aware of the potential risks prior to entering the affected area.

The table below presents the signs that may be used for AT&T installations.

CRAN / HETNET Small Cell Decals / Signs		Alerting Signs	
	<p>NOTICE DECAL</p>	 <p>TRILINGUAL NOTICE</p>	 <p>NOTICE 2</p>
		 <p>CAUTION 2 – ROOFTOP</p>	 <p>CAUTION 2A</p>
		 <p>CAUTION 2B - TOWER</p>	 <p>CAUTION 2C - PARAPETS</p>
		 <p>WARNING 1B</p>	 <p>WARNING 2A</p>

Based upon protocols presented in AT&T's RF Exposure: Responsibilities, Procedures & Guidelines document, dated October 28, 2014, and additional guidance provided by AT&T, the following signage is recommended on the site:

- Yellow CAUTION 2B sign posted at the base of the monopole.

No barriers are required for this site. The signage is graphically represented in the Signage Plan presented in Appendix B.

5.0 SUMMARY AND CONCLUSIONS

EBI has prepared this Radiofrequency Emissions Compliance Report for the proposed AT&T telecommunications equipment at the site located at 3519 Franklin Canyon Road in Hercules, California.

EBI has conducted theoretical modeling to estimate the worst-case power density from AT&T antennas to document potential MPE levels at this location and ensure that site control measures are adequate to meet FCC and OSHA requirements, as well as AT&T's corporate RF safety policies. As presented in the preceding sections, based on worst-case predictive modeling, there are no modeled exposures on any accessible ground walking/working surface related to ATT's proposed antennas that exceed the FCC's occupational and/or general public exposure limits at this site. Additionally, there are areas where elevated workers may be exposed to power densities greater than the occupational limits. The worst-case emitted power density may exceed the FCC's occupational limit within approximately 13 feet of AT&T's proposed antennas at the antenna face level. Workers and the general public should be informed about the presence and locations of antennas and their associated fields.

Signage is recommended at the site as presented in Section 4.0 and Appendix B. Posting of the signage brings the site into compliance with FCC rules and regulations and AT&T's corporate RF safety policies.

6.0 LIMITATIONS

This report was prepared for the use of AT&T Mobility, LLC to meet requirements outlined in AT&T's corporate RF safety guidelines. It was performed in accordance with generally accepted practices of other consultants undertaking similar studies at the same time and in the same locale under like circumstances. The conclusions provided by EBI are based solely on the information provided by the client. The observations in this report are valid on the date of the investigation. Any additional information that becomes available concerning the site should be provided to EBI so that our conclusions may be revised and modified, if necessary. This report has been prepared in accordance with Standard Conditions for Engagement and authorized proposal, both of which are integral parts of this report. No other warranty, expressed or implied, is made.

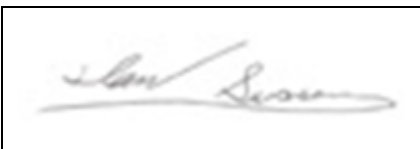
Appendix A

Personnel Certifications

Preparer Certification

I, Ian Swanson, state that:

- I am an employee of EnviroBusiness Inc. (d/b/a EBI Consulting), which provides RF-EME safety and compliance services to the wireless communications industry.
- I have successfully completed RF-EME safety training, and I am aware of the potential hazards from RF-EME and would be classified “occupational” under the FCC regulations.
- I am fully aware of and familiar with the Rules and Regulations of both the Federal Communications Commissions (FCC) and the Occupational Safety and Health Administration (OSHA) with regard to Human Exposure to Radio Frequency Radiation.
- I have been trained in on the procedures outlined in AT&T’s RF Exposure: Responsibilities, Procedures & Guidelines document (dated October 28, 2014) and on RF-EME modeling using RoofMaster™ modeling software.
- I have reviewed the data provided by the client and incorporated it into this Site Compliance Report such that the information contained in this report is true and accurate to the best of my knowledge.

A rectangular box containing a handwritten signature in dark ink. The signature appears to read "Ian Swanson" in a cursive script.

Appendix B

Compliance/Signage Plan

Nearest Walking Surface Simulation



	Existing Sign
	Proposed Sign
	Installed Sign

SIGN IDENTIFICATION LEGEND			
	AT&T NOTICE 2 Sign		AT&T CAUTION 2 – Rooftop Sign
	AT&T WARNING 1B and 2A Signs		AT&T CAUTION 2B – Tower Sign
	AT&T NOTICE Small Cell Signs		AT&T CAUTION 2C – Parapet Sign
	AT&T CAUTION Small Cell Signs		AT&T TRILINGUAL NOTICE Sign



**CITY OF HERCULES
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Chair Galieva and Members of the Planning Commission

FROM: Robert Reber, AICP, Community Development Director
Rusty Monroe, Founder/Senior Partner—The Center for Municipal Solutions
Robert Ross, Technical Expert/Consultant—The Center for Municipal Solutions

FOR: Regular Planning Commission Meeting of October 5, 2020

SUBJECT: **Recommended Updates to Hercules Municipal Code—Title 10, Chapter 16—Wireless Telecommunications Facilities**

APPLICANT: City of Hercules Initiated

RECOMMENDATION

Staff recommends that the Planning Commission:

- a. Request City staff present the staff report;
- b. Open the public hearing and receive testimony;
- c. Request clarification, if necessary, from staff on any issues related to the proposed changes to Municipal Code regulation of wireless telecommunications facilities;
- d. Close the public hearing; and
- e. Adopt draft Planning Commission resolution (Attachment 1) recommending that the City Council pass an Ordinance revising Title 10, Chapter 16—Telecommunications Facilities section of the Hercules Municipal Code to incorporate the recommended changes to address small wireless facilities (Attachment 2), with any modifications deemed necessary by the Commission.

BACKGROUND

Small cell wireless communication facilities, also called “5G,” are a type of wireless infrastructure. Existing wireless facilities are typically large antennas (also referred to as “macrocells”) placed high above the ground that service a wide area, measured in square miles. Conversely, the 5G antennae (“small cells”) provide spot coverage to a relatively small area up to several hundred feet away. Because of the very limited coverage areas

associated with small cells, many more antennae are necessary and need to be relatively closer to the ground (compared to macrocells) and closer to homes and businesses. The telecommunications industry plans to install the vast majority of these antennae in public rights-of-way, affixed to existing pole infrastructure (streetlights, traffic signals, and utility poles), or on new purpose-built small cell poles.

On October 15, 2018, the Federal Communications Commission (FCC) issued a Final Rule (FCC-18-133, “Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment” and referred to as the “FCC Order”), which implements industry demands to remove barriers and accelerate the transition to 5G deployment, accelerating the United States’ transition to 5G cellular networks. The FCC Order, which took effect on January 14, 2019, provides guidance and rules to streamline the wireless infrastructure siting review process to facilitate the deployment of next-generation wireless facilities. The Order addresses state and local consideration of aesthetic concerns, specific fee levels, and limits on review time (“shot clocks”) related to the deployment of small wireless infrastructure.

The City’s own telecommunications regulations (Hercules Municipal Code Title 10, Chapter 16) were last updated on September 8, 2015, when the City Council approved Ordinance No. 487. Subsequently approved Federal regulations, including the FCC Order described above, require additions to the City’s existing ordinance to address small wireless facilities. Working with the City’s telecommunications consultants from The Center for Municipal Solutions, City staff have incorporated all the changes that are required for the ordinance to both comply with FCC regulations and be effective immediately.¹

The City’s existing ordinance is not structured to deal with small cell infrastructure, in part because the regulations do not provide guidance regarding how to best conceal equipment in the public right-of-way and attached to existing poles. Staff has determined that the specific changes shown in Attachment 2 and summarized below are needed and would be in the best interest of the city. The proposed changes would add the following subsections to Title 10, Chapter 16 of the Municipal Code (“Wireless Telecommunications Ordinance”):

- Administrative Use Permit Applicability for Modifications that Qualify as Eligible Facilities
- Application Requirements for an Administrative Special Use Permit
- Design, Visibility, and Aesthetics
- Small Cell and Small Wireless Facilities (covering both existing and new structures, on both private property and public right-of-way)

¹ The proposed changes do not address FCC-19-126 which will not be implemented until December 2021 and which will address additional regulations regarding human exposure to radiofrequency electromagnetic fields.

ENVIRONMENTAL DETERMINATION

The adoption of the below Ordinance Amendments are exempt under the CEQA Guidelines § Section 15061(b)(3), covered by the ‘general rule,’ as the project will not have a significant effect on the environment and stemmed from the prior CEQA determination.

ATTACHMENTS

1. Draft Ordinance with proposed changes to Municipal Code Title 10, Chapter 16—
Wireless Telecommunications Facilities (redlined with tracked changes)
2. Draft Ordinance with proposed changes to Municipal Code Title 10, Chapter 16—
Wireless Telecommunications Facilities (clean with changes incorporated)

RESOLUTION #20-XX
SMALL WIRELESS TELECOMMUNICATIONS FACILITIES

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDING THAT THE CITY COUNCIL CONSIDER PASSING AN ORDINANCE REVISING TITLE 10, CHAPTER 16 – TELECOMMUNICATIONS FACILITIES SECTION OF THE HERCULES MUNICIPAL CODE TO UPDATE THE CITY’S CURRENT POLICIES AND PROCESSES ON SMALL WIRELESS FACILITIES IN CONFORMITY WITH CURRENT STATE AND FEDERAL STANDARDS AND TECHNOLOGIES.

WHEREAS, in 1996 the United States Congress adopted the 1996 Federal Communications Act, which encourages the growth of the telecommunications industry through deregulation, while confirming local government’s ability to regulate the installation of personal communications service (PCS) and cellular telephone facilities and related telecommunication facilities for health, safety, and aesthetics; and

WHEREAS, on June 10, 1997, the City Council adopted Ordinance No. 339, adding Chapter 16, entitled “Telecommunications Facilities,” to Title 10 of the Hercules Municipal Code in response to the Federal Communications Act; and

WHEREAS, in February 2013, the City hired The Center for Municipal Solutions to assist with updating the Telecommunications Ordinance and work on behalf of the City to process telecommunication facility applications; and

WHEREAS, on August 11, 2015, the City Council adopted Ordinance No. 487, substantially revising Chapter 16, Title 10, entitled “Telecommunications Facilities,” of the Hercules Municipal Code to update the City’s then policies and processes on wireless facilities for conformance with State and Federal standards and technologies; and

WHEREAS, on October 15, 2018, the Federal Communications Commission (FCC) issued a Final Rule (FCC-18-133, “Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment”), which took effect on January 14, 2019, with the purpose of accelerating the United States’ transition to 5G cellular networks by streamlining wireless infrastructure siting review processes at the state and local level; and

WHEREAS, the City of Hercules finds that small wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants, and the City also recognizes that facilitating the development of wireless service technology is an economic development asset to the City and of significant benefit to the City and its residents; and

WHEREAS, the Planning Commission, after thoroughly studying and deliberating, finds that in order to assure that the placement, construction, or modification of a small wireless telecommunications facility is consistent with the City's land use policies, the City should revise its wireless telecommunications facility application and permitting process and that the proposed updated Ordinance is needed to minimize the physical impact of small wireless telecommunications facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Hercules.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Hercules hereby recommends to the City Council the adoption of the attached text revisions with the intent of updating the existing Title 10, Chapter 16 – Telecommunications Facilities (put in place by Ordinance #487) with revisions and additions to address small wireless telecommunications facilities.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the Planning Commission of the City of Hercules held on the 5th day of October 2020 by the following vote of the Commission:

AYES:

NOES:

ABSENT:

ABSTAIN:

Irina Galieva, Chairperson

ATTEST:

Robert Reber, Community Development Director

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TITLE 10

Chapter 16. Wireless Telecommunications Facilities

Section 10-16.101 Purpose and Legislative Intent

The Telecommunications Act of 1996 affirmed the City of Hercules' authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities. This Chapter provides for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

The City of Hercules finds that wireless telecommunications facilities (facilities) may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to assure that the placement, construction or modification of a facility is consistent with the city's land use policies, the city is adopting a single, comprehensive, wireless telecommunications facility application and permitting process. The intent of this Chapter is to minimize the physical impact of wireless telecommunications facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Hercules.

Section 10-16.102 Severability

- a) If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- b) Any special use permit issued pursuant to this Chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the City.

Section 10-16.103 Location of Wireless Telecommunications Facilities

- a) New towers or other support structures shall be prohibited in residential districts, and historic districts, unless the applicant provides clear and convincing evidence demonstrating that (1) a new tower as proposed is necessary to the exclusions of any alternative or reasonable combination of alternatives; (2) that the intended area cannot be served from outside the district without a new tower or other support structure; (3) that no

existing or previously approved facility can reasonably be used for antenna placement; and (4) that not to permit a new tower or other support structure would result in a significant gap in service.

- b) Applicants shall locate, site and erect all facilities and associated equipment in accordance with the following priorities, in the following order:
 - 1) On City-owned properties or facilities without increasing the height of the tower or support structure.
 - 2) On other existing structures without increasing the height of the tower or support structure.
 - 3) On City-owned properties or facilities.
 - 4) On existing structures without exceeding the maximum permitted height under this Chapter.
 - 5) On properties in areas zoned for business use.
 - 6) On properties in areas zoned for open space but not extending higher than one hundred (100) feet below any ridgelines.
 - 7) On properties in designated historic districts.
 - 8) On properties in areas zoned for residential use.
- c) If the proposed site is not proposed for the highest priority listed above, a detailed narrative and technical explanation consisting of clear and convincing technical evidence must be provided to document the need to use any lower siting priority.
- d) The person seeking such an exception must satisfactorily demonstrate the reason(s) why a special use permit or administrative special use permit should be granted for the proposed site as opposed to a site(s) higher in the priority list.
- e) Notwithstanding the priorities set forth in the preceding Section 10-16.103 (b) above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the City may direct that the proposed location be changed to another location that is more in keeping with the goals of this Chapter and the public interest as determined by the City and that serves the intent of the Applicant.

Section 10-16.104 Exclusions

The following shall be exempt from this Chapter:

- a) Any facilities expressly exempt from the City's siting, building and permitting authority.
- b) Any wireless reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
- c) Facilities, except towers, used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications less than thirty-five (35) feet in height above the ground.
- d) Noncommercial facilities used exclusively for providing unlicensed spread spectrum technologies where (1) there is no charge for the use of the wireless service; (2) the facility does not require a new tower or increase the height of the structure being attached to; and (3) the service is not intended to be useable more than one-hundred feet (100) from the antenna(s).

Section 10-16.105 Exceptions and Existing Facilities Prior to the Adoption of this Chapter

- a) If constructed as required by the original permit, any properly permitted facility that exists on the effective date of this Chapter shall be allowed to continue as it presently exists for the term of the original permit, provided that (1) it exists and is operating as originally permitted; and (2) that any modification of the facility has been properly permitted.
- b) Any modification not properly previously permitted prior to the adoption of this Chapter must be permitted under this Chapter.
- c) Any new modification of a facility and any modification of equipment associated with the facility, must be permitted under this Chapter and will require the entire facility and any new or modified installation to comply with this Chapter, except that any tower or other support structure properly permitted prior to the adoption of this Chapter shall have the height grandfathered and may remain at the originally permitted height.
- d) Any repair and maintenance of a wireless facility that does not (1) increase the height of the structure, (2) alter the profile, (3) change the RF emissions levels, (4) increase the footprint of the facility, or (5) otherwise exceed the conditions of the conditional or special use permit, does not require an application for a new special use permit, but may require a building permit. In no instance shall any additional construction or modification be considered to be repair or maintenance.

Section 10-16.106 Administrative Use Permit Applicability for Modifications that Qualify as Eligible Facilities

- a) Modifications for towers shall be allowed, provided that cumulatively they would not exceed the maximum allowable height as set forth in this Section, or the distance up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower, or individually extend more than ten feet (10) feet beyond the extremities of the tower in any direction.
- b) Modifications for support structures other than towers permitted prior to the adoption of the ordinance codified in this Chapter shall be allowed, provided that individually they do not extend more than ten feet (10) beyond the edge of the structure in any directional horizontal direction. Vertical modifications cumulatively shall not exceed the maximum allowable height as set forth in this Section, or the distance up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower
- c) To comply with the concealment intent in regards to minimizing the visual impact, all modifications shall comply with and not exceed the size parameters and limitations set forth in this Chapter.
- d) Required “First Step” documents for 6409(a) Eligible Facilities shall include:
 - 1) Funding of escrow account, as set by the City’s Master Fee Schedule.
 - 2) Completed project information form.
 - 3) Submittal of full, formal, and complete construction drawings certified by a professional engineer (PE) licensed in the State. Note: Zoning drawings are not acceptable.
 - 4) Report on the physical condition/safety of the facility utilizing the most recent version of ANSI/TIA-222 (American National Standards Institute / Telecommunications Industry Association) or adopted equivalent, certified as being true and accurate by a PE licensed in the State.
 - 5) Insurance certificate listing the City and its consultant as additional insureds.
 - 6) Performance bond.
 - 7) Removal bond (updated) for the life of the facility.

- 8) Certificate of completion or proof of passing the final inspection for the latest previously approved permit at the location/facility.
- 9) Proof of property owner authorization for this modification.
- 10) Color-coded carrier-generated RF coverage (propagation) maps, with all appropriate legends, showing the coverage for the highest and lowest frequencies to be used by the facility.
- 11) Completed RF study data form provided by the City showing the 'modeling' information used to produce the RF coverage (propagation) maps for each frequency and antenna used and or proposed to be used.
- 12) Hazmat Plans:
 - a. Hazmat Plan for any storage and/or use of liquid or gas fuel or batteries.
 - b. CEQA report, as applicable.

Section 10-16.107 Special Use Permit Applicability

A special use permit application shall be required for the following types of structures and activities and shall comply with the requirements set forth in this Chapter:

- a) A new tower or support structure; or
- b) A substantial modification or subsequent to the adoption of this Chapter any modification that would increase the height, width, profile, structural loading on the support structure beyond the definition of eligible facility; or increase the size of the compound beyond the maximum allowed under this chapter, or does not conform with the concealment policy for towers and wireless facilities set forth in Section 10-16.108(z) (including but not limited to height, size of the profile, color and camouflage and the distance or size of extensions beyond the tower or other support structure). To protect and maintain the integrity and effect of the concealment policy, any lateral modifications that would extend more than ten (10) feet from the lateral extremity of a tower or the width of the tower at the height of attachment, or more than three (3) feet from the edge of a non-tower support structure would be subject to a special use permit; or
- c) A facility permitted after the adoption of this Chapter that involves construction or excavation or deployment outside the compound (i.e., outside the current boundaries of the site); or

- d) Proposes more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or for towers in the public rights-of-way and base stations if the modification involves the installation of any new equipment cabinets on or below the ground if there are no pre-existing ground or below ground cabinets associated with the structure, or that involves the installation of ground or below ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure; or
- e) Facilities that do not comply with conditions associated with the siting approval of the original support structure and/or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the threshold for an eligible facility as defined in FCC Report and Order 14-153.

Section 10-16.108 General Policies for All Applications under this Chapter

In order to ensure that the placement, construction and modification of a facility does not endanger or jeopardize the health, safety, public welfare, environmental features, or change the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Chapter, the City hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or administratively granted authority for wireless facilities for the express purpose of achieving these outcomes. The following are general policy actions are intended to accomplish these goals:

General Application Process

- a) Implementing an application process and requirements; establishing procedures for examining and analyzing the contents of an application and issuing a special use permit or administrative special use permit that is both fair and consistent with this section;
- b) Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
- c) Requiring administrative special use permit for any modification of an eligible facility.
- d) Requiring a special use permit for any new tower or other support structure or any co-location or modification of a facility that is not an eligible facility pursuant to the FCC's Report and Order 14-153 dated October 17, 2014;
- e) There shall be no towers or other support structures permitted or built on speculation, such meaning without a carrier or other wireless provider proving the need for such as required in this Section and committing in writing to attach to and provide service from the tower or other new structure immediately upon construction.

- f) No work of any kind on a facility shall be started until the application is reviewed and approved by the Commission or appropriate administrative entity and the special use permit, or administrative special use permit if applicable, has been issued and all other applicable permits have been issued.
- g) A facility or part thereof, including but not limited to ancillary structures or equipment, utilities installed to serve the facility and equipment used to construct or maintain the facility, shall not infringe on or in any manner whatsoever, at any time and for any reason other than for an official governmentally declared emergency, encumber, obstruct or interfere with the City's property and/or public rights-of-way or the use thereof without the City's express written permission.
- h) The Planning department is the officially designated agency or body of the city to whom applications for an administrative special use permit or a special use permit for a facility must be made. The City at its discretion may hire an outside consultant to accept, review, analyze, evaluate and make recommendations to staff and present the findings to the Planning Department or Planning Commission (Commission) who is authorized to make decisions with respect to granting or not granting or revoking an administrative special use permit or special use permits applied for under this Chapter respectively. The Commission shall possess the right to appeal Planning Department decisions while the City Council shall possess the sole right to hear appeals on all special use permits following the procedure outlined in Chapter 44 of the City Zoning Chapter.
- i) Pre-Application Meeting: There shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site or telephonically as deemed appropriate. The purpose of the pre-application meeting will be to address (1) issues that will help to expedite the application review and permitting process; and (2) identify and address certain issues or concerns the City or the applicant may have.
- j) Site Visit: If there has not been a prior site visit for the requested facility within the previous six (6) months, a site visit shall be conducted. Costs of the City's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a deposit fee set forth in the City's Master Fee Schedule, which shall have been paid to the City prior to any site visit or pre-application meeting.
- k) An application may not be filed until both a site visit, when required, a pre-application meeting are held, and any required applicable community outreach meeting has been conducted and a story pole has been erected as required, and all fees and deposits have been delivered to the City Planning Department.
- l) Applicant(s) of Record: The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official applicant of record. Notwithstanding the preceding, for a new tower or other new support structure or for a substantial modification the technical need for a new facility must be documented and substantiated by clear and convincing technical evidence showing a particular carrier's or other user-of-the-facility's technical need for what is requested. Notwithstanding the

preceding, to avoid any conflict of interest as relates to City-owned facilities, the City is not permitted to be an applicant or a party to an application by a private commercial entity.

- m) The applicant must provide clear and convincing documentation to substantiate that it has the legal right to proceed as proposed on the site in the form of an executed copy of the lease with the landowner or a signed letter of agency granting authorization (which shall not constitute approval of proposed work). If the applicant owns the site, a copy of the ownership record is required.
- n) An application shall be signed on behalf of the applicant(s) by the person(s) vested with the authority to bind and commit the applicant and attesting to the truth, completeness and accuracy of the information presented.
- o) Owner Permission: An applicant intending to co-locate on an existing facility shall be required to provide written documentation of the intent of the existing facility owner and property owner to allow the intended use by the applicant.
- p) Properly Completed Application: All applicants shall closely follow the instructions for preparing an application. not closely following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the otherwise required thirty (30) day notification period of an incomplete application until the receipt of a complete and properly completed application.
- q) Amended Application: Unless expressly and boldly stated in the front of the application at the time of its submittal that the application is not complete, it shall be assumed that the applicant reviewed the application for compliance and intended the application to be complete, and therefore any subsequently submitted information intended to correct any deficiencies shall be deemed an amendment to the application.
- r) Any and all representations made by the applicant or that are made in support of the application during the application process, whether written or oral, shall be deemed to be on the record and shall be deemed to have been intended to be relied upon in good faith by the City. Any oral representation shall be treated as if it were made in writing.
- s) Single Submittal. To establish a clear and specific date certain by which to measure the time allowed the City for the review for completeness of an application, as well as the date by which action must be taken, an application must be filed as a single submittal and not in separately subsequently provided submittals. No application shall be allowed to be filed in pieces or in a piecemeal fashion or manner over any given amount of time, unless permission to do so is expressly both requested and granted in writing.
- t) Type of Application. To prevent confusion and any loss of the City's rights under the FCC's "Shot Clock" rule pursuant to the FCC Report and Order 14-153 as reference to the date an application was officially filed and the start of the shot clock regarding the limited time allowed to determine if an application is complete, at the time of the initial

filing of an application, it must contain a cover letter stating (1) whether the application is filed as an “eligible facility” application including the justification for such, or a “substantial modification,” or involves a new support structure; and (2) a statement that the application contains all of the information required under this Chapter for that type of Application, and be signed by a person with first-hand personal knowledge of such.

- u) Required Commitment Statements. All applications shall include written commitment statements that:
 - 1) The applicant’s facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the special use permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Commission or City Council in writing;
 - 2) The construction of the facility is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.
- v) Number of Applications: An applicant shall submit to the City the number of completed Applications determined to be needed at the pre-application meeting as well as computerized copies of such. If Commission action is required, applications will not be transmitted to the Commission for consideration until the application is deemed complete by City staff and a recommended action report is prepared for the Commission’s consideration.

Design Intent, Siting and Applicable Building and Safety Codes

- w) Minimizing the Visual Impact: For reasons of concealment, all proposed facilities and Modifications to Facilities shall be designed to so as to minimize the physical and visual impact on the community, including but not limited to the use of stealth or camouflaging siting techniques, so as to make the Facility substantially invisible, or as nearly so as is reasonably possible.
- x) Least Intrusive Option: As a matter of concealment, requiring that the facility shall be the least visually intrusive among those options available, given the facts and circumstances.
- y) Profile: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved and create the smallest profile reasonably possible under the facts and circumstances and thereby have the least adverse visual effect and be substantially invisible, all antennas attached to a Tower or other structure shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- z) Concealment and Harmony with Surroundings: A tower or other support structure and any and all accessory or associated structures and equipment shall maximize the use of building materials, colors and textures designed to harmonize with the natural

surroundings so as to make the Facility substantially invisible. This shall include the utilization of stealth or camouflage techniques or other concealment methods such as but not limited to abiding by the established or maximum permitted height.

- aa) Required Use of Existing Structures: Unless such is proven to be technologically impracticable, the City requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new support structure, or for applications submitted subsequent to the adoption of this Chapter to increase the height, footprint or profile of a facility beyond the maximum permitted height, width or overall profile. In instances involving a substantial modification, or for a new facility subsequent to the adoption of this Chapter, the Applicant shall submit a comprehensive report inventorying all existing structures fifty (50) feet or more in height within one-half (1/2) mile of the location of any proposed new Facility.

Co-located equipment shall consist only of the minimum antenna array technologically needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.

- bb) Modifications of ~~a Tower and Tower Mounted Equipment~~: So as not to defeat the concealment intent of the maximum permitted height of towers or other support structures, modifications, singly or cumulatively on a single structure, shall not exceed the height allowed under the original permit by more than ten (10) feet, nor shall any lateral modification extend more than ten (10) feet from the lateral extremity of a tower, nor more than three (3) feet from the edge of a non-tower support structure.
- cc) Effect of Lease or Option to Lease on Siting/Location Priorities. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Chapter. An applicant may not by-pass sites of higher priority because the site proposed is under lease or an option to lease. If a site other than the number 1 priority is proposed, the applicant must provide clear and convincing technical evidence as to why co-location is technically impracticable or clear and convincing relevant information as to why it would be commercially impracticable. Build-to-suit agreements between carriers and a proposed tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with this Chapter.
- dd) Utilities: All utilities at a facility site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to applicable electrical codes.
- ee) Vehicular Access: At a Facility needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance, grade change and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial

work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations, and may include the installation of gravel, asphalt or other road building materials as determined by the City Engineer or their designee.

- ff) Compliance with Applicable codes: All work at a facility shall be done in strict compliance with all versions or editions of the latest applicable building, technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electrical Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- gg) Certifications: Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of California.
- hh) Permits and Licenses: A holder of a special use permit or administrative special use permit granted under this Chapter shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- ii) Compliance with Law: All Facilities, must at all times comply with all applicable local, State and federal laws, rules and regulations, including but not limited to applicable safety rules, regulations and standards, ~~including but not limited to any noise control or noise abatement requirements, restrictions or standards of the City or County.~~
- jj) Distributive Access Systems (DAS) and Small Cell nodes that are owned or operated by a commercial carrier and are part of a commercial wireless system, or when activated are capable of being used for commercial purposes by the general public, are expressly included in the context of this Chapter, regardless of the location or whether the facility is located inside or outside a structure or building.

Other Policies

- kk) Community Outreach Meeting. To provide an opportunity for those reasonably expected to be affected to understand what is proposed and its impact, and to have input to the applicant, at the City's option given the facts and circumstances involved, for any i) new support structure, ii) any substantial modification or iii) any modification that would increase the height of the facility by five (5) feet or more or increase the size of the profile by two (2) feet or more horizontally, a community outreach meeting may be required to be held between the applicant, the residents in the area of the proposed site or

work and the City. At least two (2) weeks prior to the date of the meeting written notice of the meeting and its purpose shall be provided to all residents located within one thousand five hundred (1,500) feet of the site. The meeting shall be held on a weeknight no earlier than 7:00 p.m. and no later than 8:00 p.m. All costs related to the meeting shall be borne solely by the Applicant, including but not limited to the cost of written notification.

- ll) Shared Use. The owner of a tower or other support structure, and his/her successors in interest, shall negotiate in good faith for the shared use of the facility for co-location by other wireless service providers, and shall:
 - 1) Respond within 60 days to a request for information from a potential shared-use applicant;
 - 2) Negotiate in good faith concerning future requests for shared use of the new wireless telecommunications facility by other telecommunications providers;
 - 3) Allow shared use of the new wireless telecommunications facility if another telecommunications provider agrees in writing to pay reasonable charges.
 - 4) Understand that failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.
- mm) Denial of a Non-Eligible Facility application: The City may, for just reason and cause, deny an application for anything that does not meet the requirements stated herein or which is otherwise not complete or as set forth in Section 10-16.115.

Section 10-16.109 Processing Fees to be Borne by Applicant

- a) The City may hire a consultant to assist the City in reviewing and evaluating Applications.
- b) The total amount of the funds needed as set forth in the City's Master Fee Schedule, as may be modified from time to time, may vary with the scope and complexity of the application, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.
- c) Preliminary informational discussion totaling less than one (1) hour cumulatively, shall be allowed to provide initial information. However, to prevent the taxpayers from having to bear the cost related to the issue of permitting and regulating wireless telecommunications facilities, an applicant shall place with the City a deposit as set forth in the City's Master Fee Schedule which shall be maintained in an escrow account for that application. The deposit is intended to cover all reasonable costs of any consultant with twenty percent (20%) overhead charge and City staff time plus twenty percent (20%) overhead in connection with the review of any Application or the permitting,

inspection, construction or modification requested and an pre-application submittal review or evaluation requested by the applicant and any lease negotiations. The payment of the deposit fee with the City shall precede site visit and any work being done that is related to an intended application or lease.

- d) If at any time during the review process this escrow account has a balance less than two thousand five hundred dollars (\$2,500.00), applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least \$5,000.00 or such other amount as determined by the Planning Director to be needed given the anticipated amount of work remaining on the application. Such additional funds must be deposited with the City before any further review, action or consideration is taken on the application. In the event that the amount held in the escrow account is more than the amount of the actual billing or invoicing at the time of the grant of the certificate of completion, the remaining balance shall be promptly refunded to the applicant upon request.
- e) If an application is amended at any time prior to the grant of the permit or authorization required under this Chapter, the City reserves the right to require a separate and additional payment for review and analysis equal to, but not exceeding, the cost created for the City by the amendment of the application. Such amount shall be paid to the City prior to the issuance of the special use permit or administrative special use permit.
- f) The City will maintain an accounting for the expenditure of all such funds. The City's consultant/expert shall invoice the City for all time expended for its services in reviewing the application including the on-site inspections of the construction and modification once permitted, plus out-of-pocket expenses. Billing of consultant time will have a twenty percent (20%) administration charge added. Additionally, any City staff time with twenty percent (20%) overhead plus any hard costs such as publications, mailing, and copies shall also be tabulated and added to the total billable costs.
- g) The total amount of the funds needed as set forth in the City's Master Fee Schedule may vary with the scope and complexity and/or the completeness of the application or the amount of time spent responding to an applicant's questions as regards the requirements of this Chapter or other applicable law, rule or regulation.

Section 10-16.110 Application Requirements for an Administrative Special Use Permit

Application requirements shall include but not be limited to the following items, be deemed complete, and must receive administrative approval by the City Planning Department, or City Manager designee, for the construction or installation of qualifying improvements prior to seeking the issuance of a Building Permit.

Ownership and Management

- a) The name, address, phone number and e-mail address of the person preparing the application;
- b) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
- c) The postal address and tax map parcel number of the property;
- d) A copy of the FCC license applicable for the intended use(s) of the wireless telecommunications facilities, including all FCC licensed frequency bands for the location;
- e) The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share space on the new tower;

Zoning and Planning

- f) The zoning district or designation in which the property is situated;
- g) The size of the property footprint on which the structure to be built or attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- h) The location, size and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the application;
- i) A site plan to scale showing the footprint of the support structure and the type, location and dimensions of access drives, landscaping and buffers, fencing, distances between property lines and adjacent structures and any other requirements of site plans;
- j) Elevation drawings showing the profile or the vertical rendition of the facility and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade, materials, colors and lighting;
- k) The azimuth, size and center line height location of all proposed and existing antennas on the supporting structure;
- l) The type and design of the facility, the number of antenna arrays proposed to be accommodated and the basis for the calculations of the Facility's capacity to accommodate the required number of antenna arrays for which the structure must be

designed;

- m) All applications shall contain proof of a performance security and liability insurance and a letter of indemnification, in conformity with City provisions listed in this Chapter.

Design, Visibility and Aesthetics

- n) Profile and Concealment: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved, and create the smallest profile reasonably possible under the facts and circumstances, all antennas attached to a tower or other structure shall be mounted inside the structure, or if such is not physically or technologically possible then flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- o) After the adoption of this Chapter, the maximum permitted width or profile of a new tower, including any attachments, shall not exceed ten (10) feet, absent clear and convincing technical evidence documenting the need for a larger profile.
- p) Flush Mounting. All new or replacement antennas, shall be flush-mounted or as close to flush-mounted on the support structure as possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the applicant can prove that it is technologically impracticable.
- q) Placement on Building Façade. If attached to a building, all antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the antennas and cabling as visually innocuous and undetectable as is possible given the facts and circumstances involved.
- r) Least Visually Intrusive Means. As a matter of concealment, all applications for a proposed facility applicable to this Chapter shall contain clear and convincing evidence that the facility is sited and designed so as to create the least visual intrusiveness reasonably possible to the greatest number of people, given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and be substantially invisible to the community in the area of the facility. The City expressly reserves the right to require the use of stealth or camouflage siting and deployment techniques, including but not limited to DAS (Distributive ~~Antenna-Access~~ System) and Small Cell nodes or the functional equivalent of such to achieve this goal and such shall be subject to approval by the Commission, unless such can be shown to be either commercially or technologically impracticable.
- s) Facility Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Chapter.

- t) **Lighting.** No tower or support structure constructed after the effective date of this Chapter shall be tall enough to require lighting. In the event lighting is legally unavoidable and is required, the applicant shall provide a detailed plan for lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. In the event lighting is legally unavoidable and is required, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any facility for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

As of the effective date of the ordinance codified in this Chapter, in the event a tower that is lighted is modified, at the time of the modification, for purposes of concealment the City may require that the Tower be retrofitted so as to comply with the lighting requirements of this Chapter.

- u) **Screening.** The applicant shall provide a description in writing and a visual rendering demonstrating how it shall effectively screen from view the bottom fifteen (15) feet of the facility and all related equipment and structures associated with the facility.
- v) **Visual Impact Assessment.** The Applicant shall furnish a visual impact assessment, which shall include:
 - 1) A computer-generated "Zone of Visibility Map" at a minimum of one (1) mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;
 - 2) Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the City as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

Safety

- w) **Age.** The age of the facility in years, including the date of the grant of the original permit;
- x) **Description.** A description of the type of tower, e.g., guyed, self-supporting lattice or

monopole;

- y) Tower Details. The make, model, type and manufacturer of the tower and the structural design analysis and report, including the calculations, certified by a professional engineer licensed in the State and proving the facility's capability to safely accommodate the facilities of the applicant without change or modification;
- z) Changes Narrative. If a modification of a facility is needed whereby the height, profile or size of the facility is increased, or construction is needed outside the compound or property, a detailed narrative explaining what changes are needed and why they are needed;
- aa) Foundation. A copy of the foundation design, including a geotechnical sub-surface soils investigation report and foundation design recommendation for the tower or other structure;
- bb) Physical Condition. If modifying an existing tower or other support structure, an ANSI /TIA-222 Report regarding the current physical condition of the facility and its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the application. No Building permit shall be issued for any wireless facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this Chapter and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City Planning Department;
- cc) Structural Analysis. The applicant shall provide certified documentation in the form of a structural analysis, including any assumptions and calculations proving that the proposed facility modifications will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent shall apply.
- dd) RF Emissions Report. A cumulative RF Emissions study and report accounting for all RF emitting equipment at the facility, including a description of the methodology used, any assumptions made and showing the calculations;
- ee) RF Emissions On-Site Survey. In certain instances the City may deem it appropriate to have an on-site RF survey of the facility done after the construction or modification and activation of the facility. Such survey shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance;
- ff) RF Emissions Remediation. A signed statement that the applicant will expeditiously remedy any physical or RF interference with other wireless devices or services.

gg) FAA Determination. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed wireless telecommunications facility is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. Unless already lighted, this requirement shall also be for any facility where the application proposes to increase the height of the facility. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

Section 10-16.111 Application Requirements for a Special Use Permit

The process for permitting and the information required under this Chapter shall be the same as in the preceding Section 10-16.110 “Application Requirements for an Administrative Special Use Permit,” except the following additional items shall also be required prior to a decision being made by the Planning Commission at a public hearing prior to seeking the issuance of a Building Permit for any construction or installation of a new facility or major modification project.

Proof of Technical Need

- a) For a new tower or other new support structure the applicant shall be required to submit clear and convincing evidence that a new tower or support structure is the only type of structure within one-half (1/2) mile of the proposed tower or support structure that will enable the provision of wireless services primarily within the City.
- b) Documentation that the facility is necessary for that carrier to provide service in the community and that co-location on an existing structure is not feasible.
- c) Documentation that co-location on an existing structure is not reasonably feasible if co-location is technically or commercially impracticable or the owner of the structure is unwilling to enter into a contract for such use. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with an application to determine whether co-location on existing structures is reasonably feasible and to document the need for a specific stated height, and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

Design of Towers (Type, Height, Setback and Fall Zones)

- d) To enable a new tower or other new support structure to be extended in height at a future date, if needed, the wireless telecommunications facility shall be structurally designed to accommodate at least four (4) antenna arrays, with each array to be flush mounted unless clear and convincing technical evidence demonstrates the impracticability of flush mounting.
- e) All new towers shall be of the monopole type. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly requested and granted based on the provision of clear and convincing technical evidence.

- f) The maximum permitted total height of a new tower or support structure shall be thirty-five (35) feet above pre-construction ground level, unless it can be shown by clear and convincing technical evidence that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the City. The maximum permitted height is expressly not an as-of-right height, but rather the maximum permitted height absent clear and convincing technical evidence of the technological Need for a greater height, and should take into consideration the ability to co-locate other carriers in the future.
- g) As the City has made the policy decision that more facilities of a shorter height is in the public interest, as opposed to fewer taller facilities, spacing or the distance between facilities shall be such that the service may be provided without exceeding the maximum permitted height.
- h) The applicant for a new tower shall submit clear and convincing technical evidence by a carrier or wireless service provider justifying the total height of the proposed facility and the need for such to the exclusion of all reasonable alternatives. Evidence in the form of propagation studies must include all modeling data and assumptions used to produce the studies at the requested height and at a height ten (10) feet lower to show that any lower height would have the effect of prohibiting the provision of service and should take into consideration the ability to co locate other carriers in the future.
- i) The City reserves the right to require a drive test to be conducted under the supervision of the City or its designee as evidence of the technical need for what is requested.
- j) With respect to the overall designed strength of a tower, but not with respect to height, towers shall be structurally designed to accommodate a minimum of four (4) carriers using substantially similar equipment to that used by the first carrier attaching to a tower and that can be increased in height if needed for technical reasons.
- k) Setback and Fall Zone: All proposed towers and any new proposed support structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: (1) a distance equal to the height of the proposed tower or support structure plus ten percent (10%) of the height of the tower or other structure, otherwise known as the fall zone; or (2) the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located within the fenced compound area as approved in the special use permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The fall zone shall be measured from the nearest edge of the tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines. At the discretion of the Commission, the preceding may not apply to support structures located in the public-rights-of-way so long as required minimum distances to adjacent buildings are complied with.

- l) The nearest portion of any access road leading to a facility shall be no less than ten (10) feet from the nearest property line.
- m) There shall be no development or human occupation of habitable buildings within the setback area or fall zone.

Community Outreach in the Case of a New Tower

- n) In order to better inform the public, the applicant shall be responsible for notifying the public by mail as well as through on-site signage, placing a story pole, and producing a photo simulation report as more specifically detailed below prior to being considered by the City's approving body.
 - 1) Story Pole. The applicant shall arrange to place a "story pole" at the exact proposed tower location and raise upon a temporary mast, a minimum of ten (10) feet in length, brightly colored flags/balloons at the maximum height of the proposed new tower in the same vertical and horizontal dimensions as the proposed antenna for at least forty-eight (48) consecutive hours immediately preceding and through the end of the community meeting.
 - 2) On-Site Signage. A four (4) foot by eight (8) foot sign shall be erected prior to community meeting notices being mailed so as to be clearly visible from the road nearest the proposed site and shall be easily readable from the road by a person with 20/20 vision. Such sign shall be placed off, but as near to, the public right-of-way as is possible and contain the times and date(s) of the initial community outreach meeting and contact information.
 - 3) Draft Community Meeting Notices. At least fourteen (14) calendar days in advance of mailing community meeting notices, the applicant shall provide a one (1) page draft copy of a public outreach notice for approval to the City and its consultant, if applicable, to include the date the story pole will be in place and the date, time, and place of the community outreach meeting and description and elevation of the proposed project.
 - 4) Mailing Community Meeting Notices. The applicant shall mail the above approved community meeting notices by first-class mail to all property owners, residents, and businesses located within one thousand five hundred (1,500) feet of the nearest property line of the subject property of the proposed construction of the tower and wireless facility (with a certified/reproducible copy of the mailing labels being provided to the City) at least fourteen (14) days, but no more than twenty-one (21) days, prior to the community outreach meeting. The applicant shall bear all costs associated with said notification.
 - 5) A report with before and superimposed after photo simulations from various locations of the story pole and to scale superimposed photo simulations of the proposed facility when completed shall be provided as part of the application.

Section 10-16.112 Streamlined Process - Requirements for an Application to Co-locate on an Existing Properly Permitted Telecommunications Facility or Existing Building Structure within the Parameters of an Approved Special Use Permit, but not including the First Attachment

- a) The process for permitting and the information required under this Chapter shall be the same as in the preceding Section 10-16.110 “Application Requirements for an Administrative Special Use Permit,” for an application qualifying for the streamlined process.
- b) An application to increase the parameters of an approved wireless telecommunications facility as it relates to height, profile, number of co-locations or footprint shall not qualify for streamlined treatment under this Chapter.
- c) Small Cell Sites. An application proposing the use of small cell technology in the public rights-of-way that does not increase the height of an existing structure being attached to by more than four (4) feet shall be entitled to the streamlined process. If increasing the height of a building by between four (4) feet and eight (8) feet the application may also be reviewed under the streamlined process, provided the applicant will install an RF translucent false facade or parapet that matches the style, color and texture of the building.
- d) Attachments to Buildings. To preserve and protect the nature and character of the area and enable the site to be substantially invisible, for any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exteriorly encased or exposed cabling shall match as closely as possible the color and texture of the structure.
- e) Attachments to Water Tanks. If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the applicant can prove that to locate elsewhere on the tank with less visual effect will prohibit or have the effect of prohibiting the provision of service or will create a safety hazard.
- f) The applicant shall provide a certification by a professional engineer licensed in the State, along with documentation in the form of a structural analysis, including calculations, that prove that the support structure and its foundation as proposed to be utilized are designed and were constructed to meet all City, State, Federal and ANSI/TIA-222 structural requirements for loads, including wind and ice loads.

Section 10-16.113 Small Cell and Small Wireless Facilities

a) **Administrative Review.** Small wireless facilities to be located on an existing support structure that do not involve a new support structure or substantial modification of an existing facility shall qualify for an administrative application review and permitting process.

An application for a substantial modification/co-location or new support structure shall not qualify for administrative review and permitting under this Chapter.

b) **Variances.** Any variance from the regulations contained in this Section shall be subject to a test of (1) technological impracticability; or (2) commercial impracticability; or (3) both, in relation to the area intended to be served by the proposed facility; and (4) any situation that would result in non-compliance with any safety or safety-related law, rule or regulation.

c) **Batched Applications.** An applicant, or its agent of record, may submit applications for multiple facilities or locations with the following conditions that are intended to ensure compliance with the FCC's 'Shot Clock' requirements:

1) No single batched submittal shall contain more than five (5) applications;

2) There must be a minimum of seven days between submittals of batched applications;

3) No more than four (4) batched applications shall be accepted in any thirty (30) consecutive day period.

4) The individual locations or sites within a batched application are severable and may be treated and permitted individually.

d) **Required Application Information.** The information required to be provided in an application under this Section is as follows.

1) The name, address, phone number and e-mail address of the person preparing the application;

2) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided for both parties.

3) The nearest postal address and tax map parcel number of the subject property.

4) The zoning district or designation in which the subject property is situated.

- 5) For all new facilities, a list of the specific frequency bands to be initially activated immediately upon completion of construction.
- 6) For all new facilities, a separate list of all frequencies licensed for the carrier, but not intended to be initially activated.
- 7) A copy of the FCC licenses applicable for all the frequency bands licensed to the carrier to provide service in the City.
- 8) Transmission and maximum effective radiated power of the antenna(s).
- 9) Written commitment statements that:
 - a) The applicant's facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the special use permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Council in writing;
 - b) The construction of the facility is legally permissible, including, but not limited to the fact that the applicant is licensed to do business in the State.
 - c) The Applicant commits to fully and completely indemnify the City for and from the applicant's use of the City's right-of-way.
- 10) A general description of the proposed scope of work and the specific purpose(s) of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with emphasis on those matters likely to be affected or impacted by the work proposed. The description shall include at a minimum the type of equipment, number of antennas, height to top of antenna(s), statement of compliance with FCC requirements, and description and/or depiction of concealment elements.
- 11) Certified detailed construction drawings and site plan, including but not limited to the following information:
 - a) If not to be located in the public rights-of-way, the location of the nearest residential structure and any unoccupied but habitable structure.
 - b) If not to be located in the public rights-of-way, the location, size and height of all existing and proposed structures on the property that are more than six (6) feet in height and are not buildings.
 - c) If not to be located in the public rights-of-way, the location of enclosures and cabinets on the property on which the structure is or will be located that are related to the subject of the application.

d) A site plan to-scale, showing the footprint of the support structure and the type, location and dimensions of :

- 1) all boundaries;
- 2) access drives;
- 3) landscaping and buffers;
- 4) fencing;
- 5) underground utilities of any kind; and
- 6) any easements.

e) Elevation drawings showing the profile or the vertical rendition of the support structure for the facility, and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade and lighting.

f) Proposed electrical and grounding plans for the facility.

12) The azimuth, size, top of antenna height and location of all proposed and existing antennas on the support structure, including the height of the top of any equipment affixed to the top of the support structure.

13) The type of support structure to be used and a structural analysis and report, including the calculations, certified by a professional engineer licensed in the State and proving the structure's capability to safely accommodate the facilities of the applicant.

14) An ANSI/TIA-222 Maintenance and Conditions Assessment report regarding the physical condition of any existing structure to be used or modified, using the most recently officially adopted version of ANSI/TIA-222. The report shall contain tolerances including but not limited to guy tensions if applicable, plumb, twist, slip splices, and take-up devices.

15) No authorization shall be issued for any structure where the structure being attached to is in need of safety-related remediation to comply with the requirements of this Chapter and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City.

16) An RF emissions report, with calculations, showing full compliance with all requirements and practices set forth by all applicable regulations, including but not limited to the latest edition of the Federal Communications Commission (FCC) OET Bulletin 65 and OSHA's regulations regarding RF emissions.

17) In certain instances, the City may deem it appropriate to have on-site RF compliance testing of the facility done after the construction or modification of the facility to determine compliance with all applicable regulations, including but

not limited to OET 65 regarding RF emissions and/or OSHA's regulations regarding RF emissions. The testing shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results, along with all calculations, shall be provided prior to the issuance of a certificate of compliance.

18) A signed statement of commitment that the applicant will expeditiously remedy any physical or RF-related issues, including interference with other wireless devices or services.

e) Construction in the Public Rights-of-Way

1) All construction and maintenance shall at all times comply with applicable portions of all federal, State and local safety and safety-related codes, rules and regulations, as well as the City's right-of-way use and occupancy regulations.

2) No equipment or work associated with a small wireless facility shall interfere with, endanger, hamper, impede or incommode access to any utility or any other facility in the public right-of-way.

3) No wireless facility, nor any work associated with such, shall interfere with, endanger, hamper or impede the usual and customary use of the public right-of-way or any vehicular or pedestrian way.

4) All work and installations on utility poles or light poles shall fully comply with the California Public Utilities Commission general orders, including but not limited to General Order 95, as may be revised or superseded.

5) Attachment to Existing Structures in the Public Rights-of-Way

a) Utility Poles. The maximum height of the top of any antenna shall not exceed ten percent (10%) of the existing height of the utility pole to be attached to immediately prior to attachment.

b) No portion of the antenna or wireless equipment on a utility pole shall be less than twenty-four (24) feet above any drivable road surface.

c) Light Poles. The maximum height of the top of any antenna shall not exceed ten percent (10%) of the existing height of the light pole to be attached to immediately prior to attachment.

d) No utility or light pole shall ever exceed the lesser of fifty (50) feet or the maximum permitted height for the zoning district in which it is located.

e) Any portion of the antenna or equipment mounted on a utility or light pole shall be no less than ten (10) feet above the ground and if attached to a light

pole no less than sixteen and one-half (16.5) feet above any drivable road surface.

f) Except for the electric meter, all accessory equipment not directly attached to the antennas shall be installed underground in a weatherproof vault(s).

g) All construction and maintenance shall at all times comply with all applicable portions of all federal, State and local safety and safety-related codes.

h) New and Replacement Poles. Primarily but not exclusively for aesthetic reasons, the City reserves the right to in certain instances and at applicant's cost require a new pole, or a replacement pole if a new pole is needed to accommodate wireless equipment. The new or replacement pole shall be a hollow metal or non-corrodable functionally equivalent structure that is in keeping with the nature and character of the surrounding area or neighborhood.

i) Aesthetics/Appearance:

1) Antenna Size. All small cell or DAS antennas and equipment attached to and directly associated with the antenna(s), excluding cabling, shall cumulatively not exceed three cubic feet (3 cu.ft.) in volume, nor be larger than two (2) feet in height.

2) Lateral Extension. If permitted to be mounted externally, no wireless antenna or other pole-mounted equipment shall extend laterally beyond the diameter of the structure as measured at the point of attachment.

3) Point of Attachment of Antennas. If permitted to be mounted externally, the point of attachment of any antennas shall not be more than three inches (3") from the pole or other support structure, and the space between the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;

4) Color. Antennas shall be of a color that as closely as is reasonably possible matches that of the support structure.

5) Placement of Electronic Equipment. All electronic equipment not attached to the antenna(s) shall be placed underground in a weather-proof vault or contained in the base of the support structure.

6) All accessory equipment not directly attached to the wireless antennas shall be installed underground in waterproof vaults.

7) All transmission or distribution cable or fiber shall be installed underground.

6) New Structures in the Public Rights-of-Way

a) Any variance or relief from the following standards must be requested in writing, including a written justification demonstrating sufficient reason for the variance or relief to be granted.

b) Any relief or variance granted may contain one (1) or more conditions:

c) New support structures shall, at the Planning Director's option, be hollow metal or made of a non-conductive, non-corrodable material of sufficient interior diameter to accommodate inside it the antenna(s) and all cabling or wiring attached to the antenna, and shall be of a color in harmony with the surrounding area or neighborhood that is acceptable to the Planning Director;

d) Height: No support structure, regardless of the type of structure, may i) be taller than the immediately adjacent utility poles or public lighting structures; or ii) the lesser of the maximum permitted height for the zoning district in which it is located or fifty feet (50') in total height, including any attachments of any kind associated with the Wireless Facility;

e) Not recognizable: A small wireless facility shall not be easily recognizable as a wireless facility by a layperson;

f) Placement of antenna(s): All antennas, cabling and equipment directly associated with the antennas shall be contained inside the new support structure;

g) No antenna shall be mounted on the side of a utility or light pole, and any antenna that for justifiable reasons is not able to be contained inside the support structure shall be mounted so as to be the least visually intrusive reasonably possible given the facts and circumstances;

h) Lateral protrusion: No antenna or equipment directly associated with an antenna shall protrude laterally beyond the outer diameter of the support structure, unless relief is requested in writing and approved;

i) Accessory equipment: All accessory equipment not directly attached to the antennas shall be installed underground in a weatherproof vault;

- j) Any new support structure shall be designed as a decorative structure and shall be in keeping with the nature and character of the surrounding area or neighborhood;
- k) No antenna shall be larger than two feet (2') in height with no portion extending laterally beyond the diameter of the structure as measured at the point of attachment to the structure;
- l) For any light pole that has an existing extending arm for the light fixture, unless mounted inside the pole or on the top of the pole, shall be mounted so as not to be easily distinguishable from the light fixture.
- m) If externally mounted, the point of attachment to the top of a structure shall not be more than three inches (3") below the bottom of an antenna, and the space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
- n) Antennas and any exposed element of such shall be of a color that as closely as is reasonably possible matches that of the support structure.
- o) All equipment other than the antenna(s) shall be placed underground in a weatherproof vault or contained within the base of the support structure.
- p) A permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless it lapses or expires sooner or is revoked.
- q) Pursuant to the preceding subsection (g), at the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- r) A permittee may apply for a new permit within the one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the City's then-current code requirements for wireless telecommunications facilities.

7) Non-Conforming Wireless Facilities in the Public Rights-Of-Way

- a) Non-conforming wireless facilities are those facilities that in one or more ways do not conform to this Chapter.
- b) Non-conforming wireless facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this Chapter; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all

applicable provisions of this Chapter at such time, to the extent the City can require such compliance under federal and state law.

- c) An aggrieved person may file an appeal of any decision of the Planning Director made pursuant to this section to the City Council. In the event of an appeal alleging that the ten (10) year amortization period is not reasonable as applied to a particular property, the City Council may consider i) the amount of investment or original cost; ii) present actual or depreciated value; iii) dates of construction; iv) amortization for tax purposes; v) salvage value vi) remaining useful life; vii) the length and remaining term of the lease under which it is maintained, if any; and viii) the harm to the public if the structure remains standing beyond the prescribed amortization period, and may set an amortization period accordingly for the specific property.

8) Construction on Private Property

a) New Structures.

Notwithstanding the requirements for new structures in public rights-of-way, the following shall apply to new structures on private property.

1. No new tower of any kind that is built to accommodate a small wireless facility may be built in a single- or multi-family residentially zoned district or neighborhood, or within one-thousand feet (1,000') of the border of such a district or neighborhood. Notwithstanding anything to the contrary as regards compatible use designation, this requirement shall not be deemed in violation of any compatible use law, rule or regulation.

2. Aesthetics/Appearance:

- a) Height: The maximum allowed height for new support structures, but not an as-of-right height, shall be:

- 1) The lesser of i) the maximum height permitted for the zoning designation in which it is to be located; or ii) fifty feet (50') above existing pre-construction grade level on non-residential private property:

- 2) The lesser of fifty feet (50') above existing pre-construction grade level, or on residential property the lesser of the height of the nearest existing street light structure or thirty-five (35') above existing grade level.

3. The support structure shall

- a) be a hollow, non-wooden, non-corrodable structure of sufficient interior diameter to accommodate the antenna(s) and cabling or wiring inside it, and shall be of a color acceptable to the Planning Director;
 - b) not be more than three inches (3") below the bottom of an antenna that is attached to the top of the structure, and the space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
4. Antennas shall be no larger than two feet (2') in height with no portion extending laterally beyond the diameter of the structure at the top of the structure at the point of attachment;
5. Antennas shall be of a color that as closely as is reasonably possible matches that of the support structure.
6. All equipment other than the antenna(s) shall be placed underground in a weather-proof vault or contained in the base of the support structure.

Section 10-16.11~~43~~ Procedural Requirements before Action on any Application Taken

- a) The City will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- b) The City may refer any Application or part thereof to any advisory committee or consultant for a non-binding recommendation.
- ~~c)~~ ~~As generally discussed in the Hercules Zoning Ordinance Section 40.800, Environmental Review, all proposed projects and applications are subject to environmental review under the California Environmental Quality Act (CEQA). The City may not regulate sitings based on RF emissions to the extent that the facilities comply with FCC standards, however, this does not relieve the City from the obligation to study any significant environmental effects caused by RF emissions. The construction of wireless communication facilities is subject to environmental review under both Federal and State law and all antenna structures must comply with NEPA. Smaller facilities may be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to guidelines in Section 15303.~~
- ~~d)~~c) Either after the public hearing, if a hearing is required, or after Administrative review as applicable, and after formally considering the application, the City may (1) approve; (2) approve with conditions; or (3) deny a permit or administrative authorization. The decision shall be in writing and shall be supported by substantial evidence contained in a written record. Throughout the application and permitting process, the burden of proof

for compliance with this Chapter or the need for something not allowed, shall always be upon the applicant.

- e) All application approvals shall contain various written conditions of approval that are required (1) prior to building permit issuance, and (2) prior to final inspections / certificate of completion, and (3) post completion requirements such as but not limited to long term facility and site maintenance blight abatement, graffiti abatement and nuisance abatement (which is generally defined in Section 4 10.04) and all general policies of this Chapter.
- ~~f)~~ d) Wireless telecommunications facilities surrounding landscaping, fencing, and related transmission equipment and building must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on wireless communication facilities or compounds must be removed within forty eight (48) hours of notification by the City.
- ~~g)~~ e) If the city approves the special use permit or administrative special use permit for the facility, then a notice of decision shall be posted within a public area of City Hall and mailed to the applicant within ten (10) working days of the City's action. the special use permit or administrative special use permit shall be effective ten (10) working days after the posting or mailing of the approval decision.
- ~~h)~~ f) If the City denies the special use permit or administrative special use permit for the facility or the modification, then the applicant shall be orally notified of such denial with specific reasons for such denial by the Planning Department or at the Commission Meeting depending on the reviewing body, and in writing within 30 calendar days of the decision, and shall set forth in writing the reason or reasons for the denial.
- ~~i)~~ g) Any discretionary decision may be appealed by the applicant or any person affected by a determination or decision. Discretionary decisions made by the Planning Department are appealable to the Planning Commission while Planning Commission decisions are appealable to City Council as outlined in the City of Hercules Zoning Chapter 44.

Section 10-16.1154 Procedural Requirements for Granting a Special Use Permit

- a) In addition to the above listed Section 10-16.113, "Procedural Requirements before Action on any Application Taken," the following procedures shall apply where a special use permit is requested
- b) The City shall schedule a public hearing(s) once it finds the application is complete (and that the applicant has held a community outreach meeting) and there are no issues of non-compliance with applicable law, rule or regulation. The City is not required to set a date if the Application is not complete or if there are unresolved issues of non-compliance. The City may, at any stage prior to issuing a special use permit or administrative special use permit, require such additional information as it deems necessary and is not prohibited from requiring as it relates to the issue of the siting, construction or modification of or at a wireless facility.
- c) Required Findings: Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City must make the following findings prior to approving a special use permit, unless there is clear and convincing technical evidence that the requirements in the Chapter are not possible to achieve or relief has been requested and an exception is warranted based on the facts and environmental/ technical circumstances involved:

- 1) The facility does not conflict with safety and safety-related codes and requirements;
- 2) The facility conforms to the City's policy of concealment;
- 3) The facility does not conflict with the historic nature or character of a neighborhood or district;
- 4) The use or construction of the facility is not contrary to an already stated purpose of a specific zoning or land use designation;
- 5) The placement and location of the facility does not create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;
- 6) The placement and location of a facility does not result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;
- 7) The facility does not conflict with the provisions of this Chapter;

Section 10-16.11~~65~~ Reasons for Denial

- a) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an application for any of the following reasons:
 - 1) Conflict with safety and safety-related codes and requirements;
 - 2) The facility would not conform to the City's policy of concealment;
 - 3) Conflict with the historic nature or character of a neighborhood or district;
 - 4) The use or construction of facilities is contrary to an already stated purpose of a specific zoning or land use designation;
 - 5) The placement and location of facilities would create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;
 - 6) The placement and location of a facility would result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;
 - 7) Conflicts with the provisions of this Chapter;

Section 10-16.11~~76~~ Assignment/Transfer, Default/ Revocation, and Termination of Administrative Special Use Permits or Special Use Permits for Wireless Telecommunications Facilities

The extent and parameters of a special use permit or administrative special use permit for a facility shall be as follows:

- a) A special use permit or administrative special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the City, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.

- b) A transfer, assignment or other conveyance of the special use permit or administrative special use permit shall require the written commitment of the new holder of the special use permit or administrative special use permit to abide by all applicable laws, rules and regulations, including but not limited to this Chapter.
- c) If a support structure or facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Chapter or of the special use permit or administrative special use permit, then the City shall notify the holder of the special use permit or administrative special use permit in writing of such violation. A permit or administrative special use permit holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the City in a reasonable period of time the special use permit or administrative special use permit shall be subject to revocation.
- d) Following notice and an opportunity to cure, and if not cured, a special use permit or administrative special use permit granted under this Chapter may be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit or other applicable law, rule or regulation, and if warranted the payment of a fine(s) as shown in the penalty provisions of this Chapter.
- e) If not cured within the time frame set forth in the notice of violation, a hearing shall be held upon due prior notice to the applicant citing the violation(s) and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the special use permit and property owner of record.
- f) Following the original notice and an opportunity to cure as relates to a given Facility, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines.

Section 10-16.11~~87~~ Responsible Party(s)

The owner(s) of a facility, including any support structure used to accommodate wireless facilities and equipment, and the owner of the land upon which a facility or support structure is located, shall at all times be jointly and severally responsible for: (a) the physical and safe condition of the facility and all components on the site related to the facility; (b) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the facility, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the facility; and (c) assuring the proper permitting as required by this Article and other City regulations by all owners of equipment, lessees and users of the facility, including but not limited to any upgrades and/or modifications of equipment. Said owner(s) shall monitor activities at the site to assure that the facility is operated in compliance with this Chapter, other City regulations, and any City issued special, administrative or conditional use permits or building permits.

Section 10-16.1~~218~~ Removal and Performance Security

- a) Support Structure Removal and Performance: The applicant and the owner of record of any proposed new tower or support structure shall, at its sole cost and expense, be

required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in an amount of at least seventy-five thousand dollars (\$75,000) for a tower or other support structure and with such sureties as are deemed adequate by the City to assure the faithful performance of the terms and conditions of this Chapter and conditions of any special use permit issued pursuant to this Chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.

- b) Attachments Performance Security: The owner of any equipment attached to a support structure shall be required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in the amount of five thousand dollars (\$5,000).

Section 10-16.1~~2019~~ Liability Insurance

- a) A holder of a special use permit for a wireless telecommunications support structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below, or as modified from time to time by City Council usually in the form of a resolution:
 - 1) Commercial general liability covering personal injuries, death and property damage: two million dollars (\$2,000,000) per occurrence/\$4,000,000 aggregate; and
 - 2) Automobile Coverage: \$2,000,000.00 per occurrence/four million dollars (\$4,000,000) aggregate; and
 - 3) A three million dollar (\$3,000,000) umbrella coverage; and
 - 4) Workers' compensation and disability: statutory amounts.
- b) For a facility located on City property, the commercial general liability insurance policy shall specifically name the City and its officers, City Council, employees, Commissions and Committee members, attorneys, agents and consultants as additional insureds.
- c) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- d) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days' prior written notice in advance of the cancellation of the insurance.
- e) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days prior to the expiration of the insurance that such policies are to renew or replace.
- f) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen (15) days prior to the grant of the building permit, the holder of the special use permit or administrative special use permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.
- g) A certificate of insurance that states that it is for informational purposes only and does not confer rights upon the City shall not be deemed to comply with this Chapter.

Section 10-16.12~~10~~ Indemnification

- a) Any application for wireless telecommunication facilities that is proposed to be located on City property shall contain a provision with respect to indemnification of the City. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City and its officers, City Council, employees, Commissions and Committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.
- b) Notwithstanding the requirements noted in subsection (a) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a special use permit for a wireless telecommunications facility.

Section 10-16.12~~21~~ Security

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- a) All facilities, including antennas, towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be climbed or collided with; and
- b) Transmitters and telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

Section 10-16.12~~32~~ Signage

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the tower owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall be on the equipment shelter or cabinet of the applicant and must be visible from the access point of the facility and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Section 10-16.12~~43~~4 Reservation of Authority to Inspect Wireless Telecommunications Facilities

- a) In order to verify that the holder of a special use permit for facility and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct and operate such facilities in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Chapter, ~~including but not limited to general maintenance requirements to items such as fencing, landscape, blight abatement, graffiti abatement and nuisance abatement (as generally discussed in Section 4-10.04)~~ the City may inspect, or cause to have inspected by a third party, all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site, including but not limited to electrical service, wiring and components. Refusal to allow or grant access to a City representative or its designee upon reasonable notice shall be deemed a violation of this Chapter.
- b) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions pursuant to 10-16.128. Refusal to allow or grant access to a City representative or its designee upon reasonable notice shall be deemed a violation of this Chapter.

Section 10-16.12~~53~~4 Removal or Moving of Wireless Telecommunications Structures and Facilities

- a) If attached to an existing structure, unless the Planning Commission deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's facilities and equipment to be moved or relocated from one structure to another, or replaced by the construction of a new facility, without proof that not to be relocated to or replaced by a facility at another location would for technical reasons prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.
- b) If the lease for the existing co-location expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed only upon (1) the provision of convincing evidence satisfactory to the Planning Commission of the need to move or relocate the facility; and (2) convincing evidence satisfactory to the Planning Commission of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a wireless service provider or carrier or other lessee, shall not be deemed a permissible reason for relocating.
- c) The owner of any facility shall be required to provide a minimum of ninety (90) days written notice to the City Clerk, City Manager, Finance Director, Planning Director, and Mayor prior to abandoning any facility.
- d) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of facilities.
 - 1) A facility has been abandoned (i.e. not used as a wireless telecommunications facility) for a period exceeding ninety (90) consecutive days or a total of one

- hundred-eighty (180) non-consecutive days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;
- 2) A support structure or facility falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;
 - 3) A support structure or facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by the required special use permit or administrative special use permit, and the special permit or administrative special use permit may be revoked.
 - 4) If the City makes a determination as noted in subsections (d)(2) or (3) of this section, then the City shall notify the holder of the permit or administrative special use permit for the facility within forty-eight (48) hours that said facility is to be brought into compliance and conformity within 30 days or be removed as listed below (unless immediate health and safety risk exists).
 - 5) The holder of the special use permit or administrative special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and equipment from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability. Restoration shall be completed within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the facility is located wishes to retain any access roadway to the facility, the owner may do so with the approval of the City.
 - 6) If a facility has not been removed, or substantial progress has not been made to remove the facility, within ninety (90) days after the permit holder has received notice, then the City may order officials or representatives of the City to remove the facility at the sole expense of the owner or special use permit holder.
 - 7) If the City removes, or causes Facilities to be removed, and the owner of the Facility does not claim and remove the material from the site to a lawful location within ten (10) days, then the City may take steps to declare the facility abandoned, and sell it.
 - 8) Notwithstanding anything in this Chapter to the contrary, the City may approve a temporary use permit/agreement for the facility for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected facility shall be developed by the holder of the special use permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the special use permit or administrative special use permit and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected facility in the manner provided in this Chapter and utilize the performance and removal bond.

Section 10-16.12~~65~~ Penalty

- a) In the event of a violation of this Chapter, or any special use permit or administrative special use permit or building permit issued pursuant to this Chapter, the City may impose and collect, and the holder of the special use permit or administrative special use permit shall pay to the City, fines or penalties as established by the City and as allowed by State law.

- b) Notwithstanding anything in this Chapter, the holder of the special use permit or administrative special use permit for a facility may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Chapter or any section of this Chapter. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit or administrative special use permit. Without limiting other remedies available to the City, the City may also seek injunctive relief to prevent the continued violation of this Chapter.
- c) Any person who violates any provision of this Chapter is liable in a civil action brought by the City Attorney on behalf of the City in the amount of one thousand dollars (\$1,000) for each such violation. Any person violating this Section shall be regarded as committing a separate offense on each day that the violation occurs or continues. If two (2) or more persons are responsible for any violation of the provisions of this Chapter, they shall be jointly and severally liable for the civil penalty set forth in this section. Amounts recovered under this Section shall be deposited into a fund carried upon the financial records of the City which shall be used exclusively for the maintenance and/or removal of telecommunications facilities, including but not limited to equipment cabinets, in the City of Hercules.
- d) Criminal Penalties for Violation. A violation of any provision of this Chapter is an infraction punishable by (1) a fine not exceeding one hundred dollars (\$100) for the first violation; (2) a fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year; and (3) a fine not exceeding one thousand dollars (\$1,000) for each additional violation occurring within one (1) year as defined in Government Code Section 36900(c). Any person violating this Section shall be regarded as committing a separate offense on each day that the violation occurs or continues. At the City Attorney's discretion, serious violations may be prosecuted as misdemeanors pursuant to Government Code Section 36900.
- e) Injunctions. In addition to all other actions and remedies, civil or penal, authorized by law, the City Attorney is authorized to file an action in court seeking injunctive relief to enjoin a violation of any provision of this Chapter or to prevent a threatened violation of any provision of this Chapter. The injunctive relief sought in any such action may be prohibitory, mandatory, or both. (Ord. 339 § 1 (part), 1997)

Section 10-16.1276 Relief

- a) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Chapter shall address and identify such at the pre-application meeting. The relief or exemption must be contained in the submitted application for either a special use permit or administrative special use permit, or in the case of an existing or previously granted conditional use permit, or special use permit or administrative special use permit, a request for modification of the facility and/or equipment. Such relief may be temporary or permanent, partial or complete.
- b) If relief waiver, or exemption for any item or issue is not requested at the pre-application meeting and is requested after the submittal of the application, the City reserves the right to require a formal amendment of the application, including the payment of all fees and charges.

- c) The burden of proving the need for the requested relief, waiver or exemption shall be solely on the applicant.
- d) The applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption.
- e) No relief, waiver or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the City, its residents and other service providers.

Section 10-16.12~~87~~ Adherence to State and/or Federal Rules and Regulations

- a) To the extent that the holder of a special use permit or administrative special use permit for a wireless telecommunications facility has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a special use permit or administrative special use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- b) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit or administrative special use permit for wireless telecommunications facilities, then the holder of such a special use permit or administrative special use permit shall conform the permitted facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Section 10-16.12~~98~~ RF Emissions

- a) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions, either for individually-owned equipment or cumulatively for all equipment at the site, as may be deemed appropriate from time to time, but no longer than every five (5) years, and that all users of the facility cooperate with the party responsible for such verification.
- b) With respect to support structures other than towers, if any section or portion of the structure or the entire site or within one hundred (100) feet of the boundaries of the site, is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape as appropriate, as well as placing RF Radiation warning signs as needed and appropriate to warn individuals of the potential danger.

Section 10-16.~~3029~~ Conflict with Other Laws

Where this Chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or Federal government, this Chapter shall apply.

Section 10-16.13~~10~~ Definitions

For purposes of this Chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

1. **“Accessory Facility or Structure”** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **“Administrative Special Use Permit”** means the official document or permit (processed by City Staff or their assignees in writing) by which an applicant can carry out an “Eligible Facility” project and then apply for a building permit.
3. **“Amend”, “Amendment” and “Amended”** mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
4. **“Applicant”** means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.
5. **“Application”** means all Necessary and *required* documentation that an Applicant submits in order to receive a Special Use Permit or a Building Permit for Wireless Telecommunications Facilities.
6. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals with a single transmit and a single receive connection. It is expressly not multiple antennas, even if such are contained in a single housing or radome.
7. **“Antenna Array”** is a set of individual **antennas** used for transmitting and/or receiving radio waves, connected together in such a way that their individual currents are in a specified amplitude and phase relationship.
8. **“City”** means the City of Hercules, California.
9. **“City Council or Council”** means the City Council of the City of Hercules.
10. **“Co-location”** means the use of an approved telecommunication structure to support Antenna for the provision of multiple wireless services.
11. **“Commercial Impracticability” or “Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not

deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”

12. **“Commission”** means the Planning Commission of the City of Hercules.
13. **“Complete” Application** means an Application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an Application and that all information is true, accurate and correct, and all deposits have been paid to the City.
14. **“Concealment”** means a physical design or treatment that minimizes adverse aesthetic and visual impacts on the view from land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a Wireless Telecommunications Facility, which shall mean the least visually and physically intrusive facility, so as to make it substantially invisible, and that is not technologically or commercially impracticable under the facts and circumstances.
15. **“DAS” or “Distributive Access System”** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.
16. **“Drive Test”** means measuring and assessing the coverage, capacity and signal strength or quality of service of a wireless service provider(s) using a mobile vehicle outfitted with drive testing measurement equipment.
17. **“Eligible Facility”** means an existing properly permitted wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a Substantial modification.
18. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
19. **“FCC”** means the Federal Communications Council, or its duly designated and authorized successor agency.
20. **“Height”** means, when referring to a Tower or wireless support structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
21. **“Maintenance”** means plumbing, electrical or mechanical work that may require a building permit, but that does not constitute a Modification of the Facility.
22. **“Modification” or “Modify”** means, the addition, removal or change of any of the physical and/or visually discernable components or aspects of a Wireless Facility with effectively identical components of the same weight and size or less, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, the color or materials of any visually discernable components, vehicular access, parking, and/or an upgrade or change-out of equipment for better or more modern equipment.. Modification and the type of Modification shall be defined as set forth in FCC Report and Order 14-153, as modified from time to time and incorporated herein by reference.
23. **“Necessary” or “Necessity” or “Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the Application. Necessary does not mean what may be desired, preferred or to comply with voluntary chosen company policies, preferences or standards.
24. **“NIER”** means Non-Ionizing Electromagnetic Radiation.

25. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
26. **“Facility”** See definition for ‘Wireless Telecommunications Facilities’.
27. **“Personal Wireless Services” or “PWS” or “Personal Telecommunications Service” or “PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
28. **“Repairs and Maintenance”** means the replacement or repair of any components of a wireless facility when the replacement is effectively identical to the component being replaced or for any matters that involve a change without the addition, removal or change of any of the physical or visually discernable components or aspects of a properly permitted Wireless Facility that will change the visible appearance of the facility from that originally permitted.
29. **“Small Cell”** means a low-powered RF node, the antennas of which are significantly smaller than tradition ‘macro site’ antennas and have a significantly smaller service area, typically anywhere from 10 meters to one half (1/2) mile.
30. **“Special Use Permit”** means the official document or permit (usually in the form of a Planning Commission or City Council Resolution) by which an Applicant is allowed to file for a building permit to construct and use a Facility as granted or issued by the City, including for a Substantial Modification. Prior to the implementation of this Chapter, a Conditional Use Permit process was utilized.
31. **“State”** means the State of California.
32. **“Structural Capability” or “Structural Capacity”**, notwithstanding anything to the contrary in any other standard, code, regulation or law, means up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.
33. **Substantial Modification** means a change or Modification that
 - a. increases the existing vertical height of the structure by the greater of (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or (c) existing the City’s maximum permitted height or
 - b. except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance within the City’s concealment requirements; or
 - c. increases the square footage of the existing equipment compound by more than 2,500 square feet.
34. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
35. **“Telecommunications Site”** See definition for Wireless Telecommunications Facilities.
36. **“Telecommunications Structure”** means a structure (i.e. building, utility poles, street lights or other similar structure) used to support equipment used to provide wireless communications.

37. **“Temporary”** means not permanent in relation to all aspects and components of this Chapter, something intended to, and that does, exist for fewer than ninety (90) days.
38. **“Tower”** means any structure designed primarily to support an antenna(s) for receiving and/or transmitting a wireless signal.
39. **“Wireless Telecommunications Facility or Facilities (WTF or WTFs)”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds, and structures, including but not limited to buildings, church steeples, silos, water Towers, signs or other any other structure that is used or is proposed to be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and enclosures, cabinets and other structures associated with the Facility. It is a structure and facility, including a compound, intended for transmitting and/or receiving wireless communications, including but not limited to radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless service, permitted by the FCC.

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TITLE 10

Chapter 16. Wireless Telecommunications Facilities

Section 10-16.101 Purpose and Legislative Intent

The Telecommunications Act of 1996 affirmed the City of Hercules' authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities. This Chapter provides for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

The City of Hercules finds that wireless telecommunications facilities (facilities) may pose significant concerns to the health, safety, public welfare, character and environment of the City and its inhabitants. The City also recognizes that facilitating the development of wireless service technology can be an economic development asset to the City and of significant benefit to the City and its residents. In order to assure that the placement, construction or modification of a facility is consistent with the city's land use policies, the city is adopting a single, comprehensive, wireless telecommunications facility application and permitting process. The intent of this Chapter is to minimize the physical impact of wireless telecommunications facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the City of Hercules.

Section 10-16.102 Severability

- a) If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Chapter, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- b) Any special use permit issued pursuant to this Chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the City.

Section 10-16.103 Location of Wireless Telecommunications Facilities

- a) New towers or other support structures shall be prohibited in residential districts, and historic districts, unless the applicant provides clear and convincing evidence demonstrating that (1) a new tower as proposed is necessary to the exclusions of any alternative or reasonable combination of alternatives; (2) that the intended area cannot be served from outside the district without a new tower or other support structure; (3) that no

existing or previously approved facility can reasonably be used for antenna placement; and (4) that not to permit a new tower or other support structure would result in a significant gap in service.

- b) Applicants shall locate, site and erect all facilities and associated equipment in accordance with the following priorities, in the following order:
 - 1) On City-owned properties or facilities without increasing the height of the tower or support structure.
 - 2) On other existing structures without increasing the height of the tower or support structure.
 - 3) On City-owned properties or facilities.
 - 4) On existing structures without exceeding the maximum permitted height under this Chapter.
 - 5) On properties in areas zoned for business use.
 - 6) On properties in areas zoned for open space but not extending higher than one hundred (100) feet below any ridgelines.
 - 7) On properties in designated historic districts.
 - 8) On properties in areas zoned for residential use.
- c) If the proposed site is not proposed for the highest priority listed above, a detailed narrative and technical explanation consisting of clear and convincing technical evidence must be provided to document the need to use any lower siting priority.
- d) The person seeking such an exception must satisfactorily demonstrate the reason(s) why a special use permit or administrative special use permit should be granted for the proposed site as opposed to a site(s) higher in the priority list.
- e) Notwithstanding the priorities set forth in the preceding Section 10-16.103 (b) above, the City may approve any site located within an area in the above list of priorities, provided that the City finds that the proposed site is in the best interest of the health, safety and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the City may direct that the proposed location be changed to another location that is more in keeping with the goals of this Chapter and the public interest as determined by the City and that serves the intent of the Applicant.

Section 10-16.104 Exclusions

The following shall be exempt from this Chapter:

- a) Any facilities expressly exempt from the City's siting, building and permitting authority.
- b) Any wireless reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
- c) Facilities, except towers, used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications less than thirty-five (35) feet in height above the ground.
- d) Noncommercial facilities used exclusively for providing unlicensed spread spectrum technologies where (1) there is no charge for the use of the wireless service; (2) the facility does not require a new tower or increase the height of the structure being attached to; and (3) the service is not intended to be useable more than one-hundred feet (100) from the antenna(s).

Section 10-16.105 Exceptions and Existing Facilities Prior to the Adoption of this Chapter

- a) If constructed as required by the original permit, any properly permitted facility that exists on the effective date of this Chapter shall be allowed to continue as it presently exists for the term of the original permit, provided that (1) it exists and is operating as originally permitted; and (2) that any modification of the facility has been properly permitted.
- b) Any modification not properly previously permitted prior to the adoption of this Chapter must be permitted under this Chapter.
- c) Any new modification of a facility and any modification of equipment associated with the facility, must be permitted under this Chapter and will require the entire facility and any new or modified installation to comply with this Chapter, except that any tower or other support structure properly permitted prior to the adoption of this Chapter shall have the height grandfathered and may remain at the originally permitted height.
- d) Any repair and maintenance of a wireless facility that does not (1) increase the height of the structure, (2) alter the profile, (3) change the RF emissions levels, (4) increase the footprint of the facility, or (5) otherwise exceed the conditions of the conditional or special use permit, does not require an application for a new special use permit, but may require a building permit. In no instance shall any additional construction or modification be considered to be repair or maintenance.

Section 10-16.106 Administrative Use Permit Applicability for Modifications that Qualify as Eligible Facilities

- a) Modifications for towers shall be allowed, provided that cumulatively they would not exceed the maximum allowable height as set forth in this Section, or the distance up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower, or individually extend more than ten feet (10) feet beyond the extremities of the tower in any direction.
- b) Modifications for support structures other than towers permitted prior to the adoption of the ordinance codified in this Chapter shall be allowed, provided that individually they do not extend more than ten feet (10) beyond the edge of the structure in a horizontal direction. Vertical modifications cumulatively shall not exceed the maximum allowable height as set forth in this Section, or the distance up to twenty (20) feet between antennas, as measured from the top of an existing antenna to the bottom of a proposed new antenna on the top of a tower
- c) To comply with the concealment intent in regards to minimizing the visual impact, all modifications shall comply with and not exceed the size parameters and limitations set forth in this Chapter.
- d) Required “First Step” documents for 6409(a) Eligible Facilities shall include;
 - 1) Funding of escrow account, as set by the City’s Master Fee Schedule.
 - 2) Completed project information form.
 - 3) Submittal of full, formal, and complete construction drawings certified by a professional engineer (PE) licensed in the State. Note: Zoning drawings are not acceptable.
 - 4) Report on the physical condition/safety of the facility utilizing the most recent version of ANSI/TIA-222 (American National Standards Institute / Telecommunications Industry Association) or adopted equivalent, certified as being true and accurate by a PE licensed in the State.
 - 5) Insurance certificate listing the City and its consultant as additional insureds.
 - 6) Performance bond.
 - 7) Removal bond (updated) for the life of the facility.

- 8) Certificate of completion or proof of passing the final inspection for the latest previously approved permit at the location/facility.
- 9) Proof of property owner authorization for this modification.
- 10) Color-coded carrier-generated RF coverage (propagation) maps, with all appropriate legends, showing the coverage for the highest and lowest frequencies to be used by the facility.
- 11) Completed RF study data form provided by the City showing the ‘modeling’ information used to produce the RF coverage (propagation) maps for each frequency and antenna used and or proposed to be used.
- 12) Hazmat Plans:
 - a. Hazmat Plan for any storage and/or use of liquid or gas fuel or batteries.
 - b. CEQA report, as applicable.

Section 10-16.107 Special Use Permit Applicability

A special use permit application shall be required for the following types of structures and activities and shall comply with the requirements set forth in this Chapter:

- a) A new tower or support structure; or
- b) A substantial modification or subsequent to the adoption of this Chapter any modification that would increase the height, width, profile, structural loading on the support structure beyond the definition of eligible facility; or increase the size of the compound beyond the maximum allowed under this chapter, or does not conform with the concealment policy for towers and wireless facilities set forth in Section 10-16.108(z) (including but not limited to height, size of the profile, color and camouflage and the distance or size of extensions beyond the tower or other support structure). To protect and maintain the integrity and effect of the concealment policy, any lateral modifications that would extend more than ten (10) feet from the lateral extremity of a tower or the width of the tower at the height of attachment, or more than three (3) feet from the edge of a non-tower support structure would be subject to a special use permit; or
- c) A facility permitted after the adoption of this Chapter that involves construction or excavation or deployment outside the compound (i.e., outside the current boundaries of the site); or

- d) Proposes more than the standard number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets; or for towers in the public rights-of-way and base stations if the modification involves the installation of any new equipment cabinets on or below the ground if there are no pre-existing ground or below ground cabinets associated with the structure, or that involves the installation of ground or below ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other ground cabinets associated with the structure; or
- e) Facilities that do not comply with conditions associated with the siting approval of the original support structure and/or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the threshold for an eligible facility as defined in FCC Report and Order 14-153.

Section 10-16.108 General Policies for All Applications under this Chapter

In order to ensure that the placement, construction and modification of a facility does not endanger or jeopardize the health, safety, public welfare, environmental features, or change the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Chapter, the City hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or administratively granted authority for wireless facilities for the express purpose of achieving these outcomes. The following are general policy actions are intended to accomplish these goals:

General Application Process

- a) Implementing an application process and requirements; establishing procedures for examining and analyzing the contents of an application and issuing a special use permit or administrative special use permit that is both fair and consistent with this section;
- b) Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
- c) Requiring administrative special use permit for any modification of an eligible facility.
- d) Requiring a special use permit for any new tower or other support structure or any co-location or modification of a facility that is not an eligible facility pursuant to the FCC's Report and Order 14-153 dated October 17, 2014;
- e) There shall be no towers or other support structures permitted or built on speculation, such meaning without a carrier or other wireless provider proving the need for such as required in this Section and committing in writing to attach to and provide service from the tower or other new structure immediately upon construction.

- f) No work of any kind on a facility shall be started until the application is reviewed and approved by the Commission or appropriate administrative entity and the special use permit, or administrative special use permit if applicable, has been issued and all other applicable permits have been issued.
- g) A facility or part thereof, including but not limited to ancillary structures or equipment, utilities installed to serve the facility and equipment used to construct or maintain the facility, shall not infringe on or in any manner whatsoever, at any time and for any reason other than for an official governmentally declared emergency, encumber, obstruct or interfere with the City's property and/or public rights-of-way or the use thereof without the City's express written permission.
- h) The Planning department is the officially designated agency or body of the city to whom applications for an administrative special use permit or a special use permit for a facility must be made. The City at its discretion may hire an outside consultant to accept, review, analyze, evaluate and make recommendations to staff and present the findings to the Planning Department or Planning Commission (Commission) who is authorized to make decisions with respect to granting or not granting or revoking an administrative special use permit or special use permits applied for under this Chapter respectively. The Commission shall possess the right to appeal Planning Department decisions while the City Council shall possess the sole right to hear appeals on all special use permits following the procedure outlined in Chapter 44 of the City Zoning Chapter.
- i) Pre-Application Meeting: There shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site or telephonically as deemed appropriate. The purpose of the pre-application meeting will be to address (1) issues that will help to expedite the application review and permitting process; and (2) identify and address certain issues or concerns the City or the applicant may have.
- j) Site Visit: If there has not been a prior site visit for the requested facility within the previous six (6) months, a site visit shall be conducted. Costs of the City's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a deposit fee set forth in the City's Master Fee Schedule, which shall have been paid to the City prior to any site visit or pre-application meeting.
- k) An application may not be filed until both a site visit, when required, a pre-application meeting are held, and any required applicable community outreach meeting has been conducted and a story pole has been erected as required, and all fees and deposits have been delivered to the City Planning Department.
- l) Applicant(s) of Record: The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official applicant of record. Notwithstanding the preceding, for a new tower or other new support structure or for a substantial modification the technical need for a new facility must be documented and substantiated by clear and convincing technical evidence showing a particular carrier's or other user-of-the-facility's technical need for what is requested. Notwithstanding the

preceding, to avoid any conflict of interest as relates to City-owned facilities, the City is not permitted to be an applicant or a party to an application by a private commercial entity.

- m) The applicant must provide clear and convincing documentation to substantiate that it has the legal right to proceed as proposed on the site in the form of an executed copy of the lease with the landowner or a signed letter of agency granting authorization (which shall not constitute approval of proposed work). If the applicant owns the site, a copy of the ownership record is required.
- n) An application shall be signed on behalf of the applicant(s) by the person(s) vested with the authority to bind and commit the applicant and attesting to the truth, completeness and accuracy of the information presented.
- o) Owner Permission: An applicant intending to co-locate on an existing facility shall be required to provide written documentation of the intent of the existing facility owner and property owner to allow the intended use by the applicant.
- p) Properly Completed Application: All applicants shall closely follow the instructions for preparing an application. not closely following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the otherwise required thirty (30) day notification period of an incomplete application until the receipt of a complete and properly completed application.
- q) Amended Application: Unless expressly and boldly stated in the front of the application at the time of its submittal that the application is not complete, it shall be assumed that the applicant reviewed the application for compliance and intended the application to be complete, and therefore any subsequently submitted information intended to correct any deficiencies shall be deemed an amendment to the application.
- r) Any and all representations made by the applicant or that are made in support of the application during the application process, whether written or oral, shall be deemed to be on the record and shall be deemed to have been intended to be relied upon in good faith by the City. Any oral representation shall be treated as if it were made in writing.
- s) Single Submittal. To establish a clear and specific date certain by which to measure the time allowed the City for the review for completeness of an application, as well as the date by which action must be taken, an application must be filed as a single submittal and not in separately subsequently provided submittals. No application shall be allowed to be filed in pieces or in a piecemeal fashion or manner over any given amount of time, unless permission to do so is expressly both requested and granted in writing.
- t) Type of Application. To prevent confusion and any loss of the City's rights under the FCC's "Shot Clock" rule pursuant to the FCC Report and Order 14-153 as reference to the date an application was officially filed and the start of the shot clock regarding the limited time allowed to determine if an application is complete, at the time of the initial

filing of an application, it must contain a cover letter stating (1) whether the application is filed as an “eligible facility” application including the justification for such, or a “substantial modification,” or involves a new support structure; and (2) a statement that the application contains all of the information required under this Chapter for that type of Application, and be signed by a person with first-hand personal knowledge of such.

- u) Required Commitment Statements. All applications shall include written commitment statements that:
 - 1) The applicant’s facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the special use permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Commission or City Council in writing;
 - 2) The construction of the facility is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.
- v) Number of Applications: An applicant shall submit to the City the number of completed Applications determined to be needed at the pre-application meeting as well as computerized copies of such. If Commission action is required, applications will not be transmitted to the Commission for consideration until the application is deemed complete by City staff and a recommended action report is prepared for the Commission’s consideration.

Design Intent, Siting and Applicable Building and Safety Codes

- w) Minimizing the Visual Impact: For reasons of concealment, all proposed facilities and Modifications to Facilities shall be designed to so as to minimize the physical and visual impact on the community, including but not limited to the use of stealth or camouflaging siting techniques, so as to make the Facility substantially invisible, or as nearly so as is reasonably possible.
- x) Least Intrusive Option: As a matter of concealment, requiring that the facility shall be the least visually intrusive among those options available, given the facts and circumstances.
- y) Profile: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved and create the smallest profile reasonably possible under the facts and circumstances and thereby have the least adverse visual effect and be substantially invisible, all antennas attached to a Tower or other structure shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- z) Concealment and Harmony with Surroundings: A tower or other support structure and any and all accessory or associated structures and equipment shall maximize the use of building materials, colors and textures designed to harmonize with the natural

surroundings so as to make the Facility substantially invisible. This shall include the utilization of stealth or camouflage techniques or other concealment methods such as but not limited to abiding by the established or maximum permitted height.

- aa) Required Use of Existing Structures: Unless such is proven to be technologically impracticable, the City requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new support structure, or for applications submitted subsequent to the adoption of this Chapter to increase the height, footprint or profile of a facility beyond the maximum permitted height, width or overall profile. In instances involving a substantial modification, or for a new facility subsequent to the adoption of this Chapter, the Applicant shall submit a comprehensive report inventorying all existing structures fifty (50) feet or more in height within one-half (1/2) mile of the location of any proposed new Facility.

Co-located equipment shall consist only of the minimum antenna array technologically needed to provide service primarily and essentially within the City, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.

- bb) Modifications of a Tower So as not to defeat the concealment intent of the maximum permitted height of towers or other support structures, modifications, singly or cumulatively on a single structure, shall not exceed the height allowed under the original permit by more than ten (10) feet, nor shall any lateral modification extend more than ten (10) feet from the lateral extremity of a tower, nor more than three (3) feet from the edge of a non-tower support structure.
- cc) Effect of Lease or Option to Lease on Siting/Location Priorities. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Chapter. An applicant may not by-pass sites of higher priority because the site proposed is under lease or an option to lease. If a site other than the number 1 priority is proposed, the applicant must provide clear and convincing technical evidence as to why co-location is technically impracticable or clear and convincing relevant information as to why it would be commercially impracticable. Build-to-suit agreements between carriers and a proposed tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with this Chapter.
- dd) Utilities: All utilities at a facility site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to applicable electrical codes.
- ee) Vehicular Access: At a Facility needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance, grade change and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial

work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations, and may include the installation of gravel, asphalt or other road building materials as determined by the City Engineer or their designee.

- ff) Compliance with Applicable codes: All work at a facility shall be done in strict compliance with all versions or editions of the latest applicable building, technical, safety and safety-related codes adopted by the City, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electrical Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- gg) Certifications: Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of California.
- hh) Permits and Licenses: A holder of a special use permit or administrative special use permit granted under this Chapter shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- ii) Compliance with Law: All Facilities, must at all times comply with all applicable local, State and federal laws, rules and regulations, including but not limited to applicable safety rules, regulations and standards
- jj) Distributive Access Systems (DAS) and Small Cell nodes that are owned or operated by a commercial carrier and are part of a commercial wireless system, or when activated are capable of being used for commercial purposes by the general public, are expressly included in the context of this Chapter, regardless of the location or whether the facility is located inside or outside a structure or building.

Other Policies

- kk) Community Outreach Meeting. To provide an opportunity for those reasonably expected to be affected to understand what is proposed and its impact, and to have input to the applicant, at the City's option given the facts and circumstances involved, for any i) new support structure, ii) any substantial modification or iii) any modification that would increase the height of the facility by five (5) feet or more or increase the size of the profile by two (2) feet or more horizontally, a community outreach meeting may be required to be held between the applicant, the residents in the area of the proposed site or work and the City. At least two (2) weeks prior to the date of the meeting written notice

of the meeting and its purpose shall be provided to all residents located within one thousand five hundred (1,500) feet of the site. The meeting shall be held on a weeknight no earlier than 7:00 p.m. and no later than 8:00 p.m. All costs related to the meeting shall be borne solely by the Applicant, including but not limited to the cost of written notification.

- ll) Shared Use. The owner of a tower or other support structure, and his/her successors in interest, shall negotiate in good faith for the shared use of the facility for co-location by other wireless service providers, and shall:
 - 1) Respond within 60 days to a request for information from a potential shared-use applicant;
 - 2) Negotiate in good faith concerning future requests for shared use of the new wireless telecommunications facility by other telecommunications providers;
 - 3) Allow shared use of the new wireless telecommunications facility if another telecommunications provider agrees in writing to pay reasonable charges.
 - 4) Understand that failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.
- mm) Denial of a Non-Eligible Facility application: The City may, for just reason and cause, deny an application for anything that does not meet the requirements stated herein or which is otherwise not complete or as set forth in Section 10-16.115.

Section 10-16.109 Processing Fees to be Borne by Applicant

- a) The City may hire a consultant to assist the City in reviewing and evaluating Applications.
- b) The total amount of the funds needed as set forth in the City's Master Fee Schedule, as may be modified from time to time, may vary with the scope and complexity of the application, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.
- c) Preliminary informational discussion totaling less than one (1) hour cumulatively, shall be allowed to provide initial information. However, to prevent the taxpayers from having to bear the cost related to the issue of permitting and regulating wireless telecommunications facilities, an applicant shall place with the City a deposit as set forth in the City's Master Fee Schedule which shall be maintained in an escrow account for that application. The deposit is intended to cover all reasonable costs of any consultant with twenty percent (20%) overhead charge and City staff time plus twenty percent (20%) overhead in connection with the review of any Application or the permitting, inspection, construction or modification requested and an pre-application submittal

review or evaluation requested by the applicant and any lease negotiations. The payment of the deposit fee with the City shall precede site visit and any work being done that is related to an intended application or lease.

- d) If at any time during the review process this escrow account has a balance less than two thousand five hundred dollars (\$2,500.00), applicant shall immediately, upon notification by the City, replenish said escrow account so that it has a balance of at least \$5,000.00 or such other amount as determined by the Planning Director to be needed given the anticipated amount of work remaining on the application. Such additional funds must be deposited with the City before any further review, action or consideration is taken on the application. In the event that the amount held in the escrow account is more than the amount of the actual billing or invoicing at the time of the grant of the certificate of completion, the remaining balance shall be promptly refunded to the applicant upon request.
- e) If an application is amended at any time prior to the grant of the permit or authorization required under this Chapter, the City reserves the right to require a separate and additional payment for review and analysis equal to, but not exceeding, the cost created for the City by the amendment of the application. Such amount shall be paid to the City prior to the issuance of the special use permit or administrative special use permit.
- f) The City will maintain an accounting for the expenditure of all such funds. The City's consultant/expert shall invoice the City for all time expended for its services in reviewing the application including the on-site inspections of the construction and modification once permitted, plus out-of-pocket expenses. Billing of consultant time will have a twenty percent (20%) administration charge added. Additionally, any City staff time with twenty percent (20%) overhead plus any hard costs such as publications, mailing, and copies shall also be tabulated and added to the total billable costs.
- g) The total amount of the funds needed as set forth in the City's Master Fee Schedule may vary with the scope and complexity and/or the completeness of the application or the amount of time spent responding to an applicant's questions as regards the requirements of this Chapter or other applicable law, rule or regulation.

Section 10-16.110 Application Requirements for an Administrative Special Use Permit

Application requirements shall include but not be limited to the following items, be deemed complete, and must receive administrative approval by the City Planning Department, or City Manager designee, for the construction or installation of qualifying improvements prior to seeking the issuance of a Building Permit.

Ownership and Management

- a) The name, address, phone number and e-mail address of the person preparing the application;
- b) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
- c) The postal address and tax map parcel number of the property;
- d) A copy of the FCC license applicable for the intended use(s) of the wireless telecommunications facilities, including all FCC licensed frequency bands for the location;
- e) The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share space on the new tower;

Zoning and Planning

- f) The zoning district or designation in which the property is situated;
- g) The size of the property footprint on which the structure to be built or attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- h) The location, size and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the application;
- i) A site plan to scale showing the footprint of the support structure and the type, location and dimensions of access drives, landscaping and buffers, fencing, distances between property lines and adjacent structures and any other requirements of site plans;
- j) Elevation drawings showing the profile or the vertical rendition of the facility and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade, materials, colors and lighting;
- k) The azimuth, size and center line height location of all proposed and existing antennas on the supporting structure;
- l) The type and design of the facility, the number of antenna arrays proposed to be accommodated and the basis for the calculations of the Facility's capacity to accommodate the required number of antenna arrays for which the structure must be

designed;

- m) All applications shall contain proof of a performance security and liability insurance and a letter of indemnification, in conformity with City provisions listed in this Chapter.

Design, Visibility and Aesthetics

- n) Profile and Concealment: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved, and create the smallest profile reasonably possible under the facts and circumstances, all antennas attached to a tower or other structure shall be mounted inside the structure, or if such is not physically or technologically possible then flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- o) After the adoption of this Chapter, the maximum permitted width or profile of a new tower, including any attachments, shall not exceed ten (10) feet, absent clear and convincing technical evidence documenting the need for a larger profile.
- p) Flush Mounting. All new or replacement antennas, shall be flush-mounted or as close to flush-mounted on the support structure as possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the applicant can prove that it is technologically impracticable.
- q) Placement on Building Façade. If attached to a building, all antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the antennas and cabling as visually innocuous and undetectable as is possible given the facts and circumstances involved.
- r) Least Visually Intrusive Means. As a matter of concealment, all applications for a proposed facility applicable to this Chapter shall contain clear and convincing evidence that the facility is sited and designed so as to create the least visual intrusiveness reasonably possible to the greatest number of people, given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and be substantially invisible to the community in the area of the facility. The City expressly reserves the right to require the use of stealth or camouflage siting and deployment techniques, including but not limited to DAS (Distributive Access System) and Small Cell nodes or the functional equivalent of such to achieve this goal and such shall be subject to approval by the Commission, unless such can be shown to be either commercially or technologically impracticable.
- s) Facility Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Chapter.

- t) **Lighting.** No tower or support structure constructed after the effective date of this Chapter shall be tall enough to require lighting. In the event lighting is legally unavoidable and is required, the applicant shall provide a detailed plan for lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. In the event lighting is legally unavoidable and is required, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any facility for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

As of the effective date of the ordinance codified in this Chapter, in the event a tower that is lighted is modified, at the time of the modification, for purposes of concealment the City may require that the Tower be retrofitted so as to comply with the lighting requirements of this Chapter.

- u) **Screening.** The applicant shall provide a description in writing and a visual rendering demonstrating how it shall effectively screen from view the bottom fifteen (15) feet of the facility and all related equipment and structures associated with the facility.
- v) **Visual Impact Assessment.** The Applicant shall furnish a visual impact assessment, which shall include:
- 1) A computer-generated "Zone of Visibility Map" at a minimum of one (1) mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;
 - 2) Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the City as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

Safety

- w) **Age.** The age of the facility in years, including the date of the grant of the original permit;
- x) **Description.** A description of the type of tower, e.g., guyed, self-supporting lattice or

monopole;

- y) Tower Details. The make, model, type and manufacturer of the tower and the structural design analysis and report, including the calculations, certified by a professional engineer licensed in the State and proving the facility's capability to safely accommodate the facilities of the applicant without change or modification;
- z) Changes Narrative. If a modification of a facility is needed whereby the height, profile or size of the facility is increased, or construction is needed outside the compound or property, a detailed narrative explaining what changes are needed and why they are needed;
- aa) Foundation. A copy of the foundation design, including a geotechnical sub-surface soils investigation report and foundation design recommendation for the tower or other structure;
- bb) Physical Condition. If modifying an existing tower or other support structure, an ANSI /TIA-222 Report regarding the current physical condition of the facility and its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the application. No Building permit shall be issued for any wireless facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this Chapter and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City Planning Department;
- cc) Structural Analysis. The applicant shall provide certified documentation in the form of a structural analysis, including any assumptions and calculations proving that the proposed facility modifications will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent shall apply.
- dd) RF Emissions Report. A cumulative RF Emissions study and report accounting for all RF emitting equipment at the facility, including a description of the methodology used, any assumptions made and showing the calculations;
- ee) RF Emissions On-Site Survey. In certain instances the City may deem it appropriate to have an on-site RF survey of the facility done after the construction or modification and activation of the facility. Such survey shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance;
- ff) RF Emissions Remediation. A signed statement that the applicant will expeditiously remedy any physical or RF interference with other wireless devices or services.

gg) FAA Determination. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed wireless telecommunications facility is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. Unless already lighted, this requirement shall also be for any facility where the application proposes to increase the height of the facility. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

Section 10-16.111 Application Requirements for a Special Use Permit

The process for permitting and the information required under this Chapter shall be the same as in the preceding Section 10-16.110 “Application Requirements for an Administrative Special Use Permit,” except the following additional items shall also be required prior to a decision being made by the Planning Commission at a public hearing prior to seeking the issuance of a Building Permit for any construction or installation of a new facility or major modification project.

Proof of Technical Need

- a) For a new tower or other new support structure the applicant shall be required to submit clear and convincing evidence that a new tower or support structure is the only type of structure within one-half (1/2) mile of the proposed tower or support structure that will enable the provision of wireless services primarily within the City.
- b) Documentation that the facility is necessary for that carrier to provide service in the community and that co-location on an existing structure is not feasible.
- c) Documentation that co-location on an existing structure is not reasonably feasible if co-location is technically or commercially impracticable or the owner of the structure is unwilling to enter into a contract for such use. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with an application to determine whether co-location on existing structures is reasonably feasible and to document the need for a specific stated height, and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

Design of Towers (Type, Height, Setback and Fall Zones)

- d) To enable a new tower or other new support structure to be extended in height at a future date, if needed, the wireless telecommunications facility shall be structurally designed to accommodate at least four (4) antenna arrays, with each array to be flush mounted unless clear and convincing technical evidence demonstrates the impracticability of flush mounting.
- e) All new towers shall be of the monopole type. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly requested and granted based on the provision of clear and convincing technical evidence.

- f) The maximum permitted total height of a new tower or support structure shall be thirty-five (35) feet above pre-construction ground level, unless it can be shown by clear and convincing technical evidence that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the City. The maximum permitted height is expressly not an as-of-right height, but rather the maximum permitted height absent clear and convincing technical evidence of the technological Need for a greater height, and should take into consideration the ability to co-locate other carriers in the future.
- g) As the City has made the policy decision that more facilities of a shorter height is in the public interest, as opposed to fewer taller facilities, spacing or the distance between facilities shall be such that the service may be provided without exceeding the maximum permitted height.
- h) The applicant for a new tower shall submit clear and convincing technical evidence by a carrier or wireless service provider justifying the total height of the proposed facility and the need for such to the exclusion of all reasonable alternatives. Evidence in the form of propagation studies must include all modeling data and assumptions used to produce the studies at the requested height and at a height ten (10) feet lower to show that any lower height would have the effect of prohibiting the provision of service and should take into consideration the ability to co locate other carriers in the future.
- i) The City reserves the right to require a drive test to be conducted under the supervision of the City or its designee as evidence of the technical need for what is requested.
- j) With respect to the overall designed strength of a tower, but not with respect to height, towers shall be structurally designed to accommodate a minimum of four (4) carriers using substantially similar equipment to that used by the first carrier attaching to a tower and that can be increased in height if needed for technical reasons.
- k) Setback and Fall Zone: All proposed towers and any new proposed support structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: (1) a distance equal to the height of the proposed tower or support structure plus ten percent (10%) of the height of the tower or other structure, otherwise known as the fall zone; or (2) the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located within the fenced compound area as approved in the special use permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The fall zone shall be measured from the nearest edge of the tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines. At the discretion of the Commission, the preceding may not apply to support structures located in the public-rights-of-way so long as required minimum distances to adjacent buildings are complied with.

- l) The nearest portion of any access road leading to a facility shall be no less than ten (10) feet from the nearest property line.
- m) There shall be no development or human occupation of habitable buildings within the setback area or fall zone.

Community Outreach in the Case of a New Tower

- n) In order to better inform the public, the applicant shall be responsible for notifying the public by mail as well as through on-site signage, placing a story pole, and producing a photo simulation report as more specifically detailed below prior to being considered by the City's approving body.
 - 1) Story Pole. The applicant shall arrange to place a "story pole" at the exact proposed tower location and raise upon a temporary mast, a minimum of ten (10) feet in length, brightly colored flags/balloons at the maximum height of the proposed new tower in the same vertical and horizontal dimensions as the proposed antenna for at least forty-eight (48) consecutive hours immediately preceding and through the end of the community meeting.
 - 2) On-Site Signage. A four (4) foot by eight (8) foot sign shall be erected prior to community meeting notices being mailed so as to be clearly visible from the road nearest the proposed site and shall be easily readable from the road by a person with 20/20 vision. Such sign shall be placed off, but as near to, the public right-of-way as is possible and contain the times and date(s) of the initial community outreach meeting and contact information.
 - 3) Draft Community Meeting Notices. At least fourteen (14) calendar days in advance of mailing community meeting notices, the applicant shall provide a one (1) page draft copy of a public outreach notice for approval to the City and its consultant, if applicable, to include the date the story pole will be in place and the date, time, and place of the community outreach meeting and description and elevation of the proposed project.
 - 4) Mailing Community Meeting Notices. The applicant shall mail the above approved community meeting notices by first-class mail to all property owners, residents, and businesses located within one thousand five hundred (1,500) feet of the nearest property line of the subject property of the proposed construction of the tower and wireless facility (with a certified/reproducible copy of the mailing labels being provided to the City) at least fourteen (14) days, but no more than twenty-one (21) days, prior to the community outreach meeting. The applicant shall bear all costs associated with said notification.
 - 5) A report with before and superimposed after photo simulations from various locations of the story pole and to scale superimposed photo simulations of the proposed facility when completed shall be provided as part of the application.

Section 10-16.112 Streamlined Process - Requirements for an Application to Co-locate on an Existing Properly Permitted Telecommunications Facility or Existing Building Structure within the Parameters of an Approved Special Use Permit, but not including the First Attachment

- a) The process for permitting and the information required under this Chapter shall be the same as in the preceding Section 10-16.110 “Application Requirements for an Administrative Special Use Permit,” for an application qualifying for the streamlined process.
- b) An application to increase the parameters of an approved wireless telecommunications facility as it relates to height, profile, number of co-locations or footprint shall not qualify for streamlined treatment under this Chapter.
- c) Small Cell Sites. An application proposing the use of small cell technology in the public rights-of-way that does not increase the height of an existing structure being attached to by more than four (4) feet shall be entitled to the streamlined process. If increasing the height of a building by between four (4) feet and eight (8) feet the application may also be reviewed under the streamlined process, provided the applicant will install an RF translucent false facade or parapet that matches the style, color and texture of the building.
- d) Attachments to Buildings. To preserve and protect the nature and character of the area and enable the site to be substantially invisible, for any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exteriorly encased or exposed cabling shall match as closely as possible the color and texture of the structure.
- e) Attachments to Water Tanks. If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the applicant can prove that to locate elsewhere on the tank with less visual effect will prohibit or have the effect of prohibiting the provision of service or will create a safety hazard.
- f) The applicant shall provide a certification by a professional engineer licensed in the State, along with documentation in the form of a structural analysis, including calculations, that prove that the support structure and its foundation as proposed to be utilized are designed and were constructed to meet all City, State, Federal and ANSI/TIA-222 structural requirements for loads, including wind and ice loads.

Section 10-16.113 Small Cell and Small Wireless Facilities

- a) Administrative Review. Small wireless facilities to be located on an existing support structure that do not involve a new support structure or substantial modification of an existing facility shall qualify for an administrative application review and permitting process.

An application for a substantial modification/co-location or new support structure shall not qualify for administrative review and permitting under this Chapter.

- b) Variances. Any variance from the regulations contained in this Section shall be subject to a test of (1) technological impracticability; or (2) commercial impracticability; or (3) both, in relation to the area intended to be served by the proposed facility; and (4) any situation that would result in non-compliance with any safety or safety-related law, rule or regulation.
- c) Batched Applications. An applicant, or its agent of record, may submit applications for multiple facilities or locations with the following conditions that are intended to ensure compliance with the FCC's 'Shot Clock' requirements:
 - 1) No single batched submittal shall contain more than five (5) applications;
 - 2) There must be a minimum of seven days between submittals of batched applications;
 - 3) No more than four (4) batched applications shall be accepted in any thirty (30) consecutive day period.
 - 4) The individual locations or sites within a batched application are severable and may be treated and permitted individually.
- d) Required Application Information. The information required to be provided in an application under this Section is as follows.
 - 1) The name, address, phone number and e-mail address of the person preparing the application;
 - 2) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided for both parties.
 - 3) The nearest postal address and tax map parcel number of the subject property.
 - 4) The zoning district or designation in which the subject property is situated.

- 5) For all new facilities, a list of the specific frequency bands to be initially activated immediately upon completion of construction.
- 6) For all new facilities, a separate list of all frequencies licensed for the carrier, but not intended to be initially activated.
- 7) A copy of the FCC licenses applicable for all the frequency bands licensed to the carrier to provide service in the City.
- 8) Transmission and maximum effective radiated power of the antenna(s).
- 9) Written commitment statements that:
 - a) The applicant's facility shall at all times without exception be maintained in a safe manner, and in compliance with all conditions of the special use permit, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable City, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Council in writing;
 - b) The construction of the facility is legally permissible, including, but not limited to the fact that the applicant is licensed to do business in the State.
 - c) The Applicant commits to fully and completely indemnify the City for and from the applicant's use of the City's right-of-way.
- 10) A general description of the proposed scope of work and the specific purpose(s) of the small wireless facility. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with emphasis on those matters likely to be affected or impacted by the work proposed. The description shall include at a minimum the type of equipment, number of antennas, height to top of antenna(s), statement of compliance with FCC requirements, and description and/or depiction of concealment elements.
- 11) Certified detailed construction drawings and site plan, including but not limited to the following information:
 - a) If not to be located in the public rights-of-way, the location of the nearest residential structure and any unoccupied but habitable structure.
 - b) If not to be located in the public rights-of-way, the location, size and height of all existing and proposed structures on the property that are more than six (6) feet in height and are not buildings.
 - c) If not to be located in the public rights-of-way, the location of enclosures and cabinets on the property on which the structure is or will be located that are related to the subject of the application.

- d) A site plan to-scale, showing the footprint of the support structure and the type, location and dimensions of :
 - 1) all boundaries;
 - 2) access drives;
 - 3) landscaping and buffers;
 - 4) fencing;
 - 5) underground utilities of any kind; and
 - 6) any easements.
 - e) Elevation drawings showing the profile or the vertical rendition of the support structure for the facility, and identifying all existing and proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the existing grade and lighting.
 - f) Proposed electrical and grounding plans for the facility.
- 12) The azimuth, size, top of antenna height and location of all proposed and existing antennas on the support structure, including the height of the top of any equipment affixed to the top of the support structure.
 - 13) The type of support structure to be used and a structural analysis and report, including the calculations, certified by a professional engineer licensed in the State and proving the structure's capability to safely accommodate the facilities of the applicant.
 - 14) An ANSI/TIA-222 Maintenance and Conditions Assessment report regarding the physical condition of any existing structure to be used or modified, using the most recently officially adopted version of ANSI/TIA-222. The report shall contain tolerances including but not limited to guy tensions if applicable, plumb, twist, slip splices, and take-up devices.
 - 15) No authorization shall be issued for any structure where the structure being attached to is in need of safety-related remediation to comply with the requirements of this Chapter and other adopted standards of the City, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the City.
 - 16) An RF emissions report, with calculations, showing full compliance with all requirements and practices set forth by all applicable regulations, including but not limited to the latest edition of the Federal Communications Commission (FCC) OET Bulletin 65 and OSHA's regulations regarding RF emissions.
 - 17) In certain instances, the City may deem it appropriate to have on-site RF compliance testing of the facility done after the construction or modification of the facility to determine compliance with all applicable regulations, including but

not limited to OET 65 regarding RF emissions and/or OSHA's regulations regarding RF emissions. The testing shall be done under the observation and direction of the City or its designee, and an un-redacted copy of the survey results, along with all calculations, shall be provided prior to the issuance of a certificate of compliance.

- 18) A signed statement of commitment that the applicant will expeditiously remedy any physical or RF-related issues, including interference with other wireless devices or services.

e) Construction in the Public Rights-of-Way

- 1) All construction and maintenance shall at all times comply with applicable portions of all federal, State and local safety and safety-related codes, rules and regulations, as well as the City's right-of-way use and occupancy regulations.
- 2) No equipment or work associated with a small wireless facility shall interfere with, endanger, hamper, impede or incommode access to any utility or any other facility in the public right-of-way.
- 3) No wireless facility, nor any work associated with such, shall interfere with, endanger, hamper or impede the usual and customary use of the public right-of-way or any vehicular or pedestrian way.
- 4) All work and installations on utility poles or light poles shall fully comply with the California Public Utilities Commission general orders, including but not limited to General Order 95, as may be revised or superseded.
- 5) Attachment to Existing Structures in the Public Rights-of-Way
 - a) Utility Poles. The maximum height of the top of any antenna shall not exceed ten percent (10%) of the existing height of the utility pole to be attached to immediately prior to attachment.
 - b) No portion of the antenna or wireless equipment on a utility pole shall be less than twenty-four (24) feet above any drivable road surface.
 - c) Light Poles. The maximum height of the top of any antenna shall not exceed ten percent (10%) of the existing height of the light pole to be attached to immediately prior to attachment.
 - d) No utility or light pole shall ever exceed the lesser of fifty (50) feet or the maximum permitted height for the zoning district in which it is located.
 - e) Any portion of the antenna or equipment mounted on a utility or light pole shall be no less than ten (10) feet above the ground and if attached to a light

pole no less than sixteen and one-half (16.5) feet above any drivable road surface.

- f) Except for the electric meter, all accessory equipment not directly attached to the antennas shall be installed underground in a weatherproof vault(s).
- g) All construction and maintenance shall at all times comply with all applicable portions of all federal, State and local safety and safety-related codes.
- h) New and Replacement Poles. Primarily but not exclusively for aesthetic reasons, the City reserves the right to in certain instances and at applicant's cost require a new pole, or a replacement pole if a new pole is needed to accommodate wireless equipment. The new or replacement pole shall be a hollow metal or non-corrodable functionally equivalent structure that is in keeping with the nature and character of the surrounding area or neighborhood.
- i) Aesthetics/Appearance:
 - 1) Antenna Size. All small cell or DAS antennas and equipment attached to and directly associated with the antenna(s), excluding cabling, shall cumulatively not exceed three cubic feet (3 cu.ft.) in volume, nor be larger than two (2) feet in height.
 - 2) Lateral Extension. If permitted to be mounted externally, no wireless antenna or other pole-mounted equipment shall extend laterally beyond the diameter of the structure as measured at the point of attachment.
 - 3) Point of Attachment of Antennas. If permitted to be mounted externally, the point of attachment of any antennas shall not be more than three inches (3") from the pole or other support structure, and the space between the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
 - 4) Color. Antennas shall be of a color that as closely as is reasonably possible matches that of the support structure.
 - 5) Placement of Electronic Equipment. All electronic equipment not attached to the antenna(s) shall be placed underground in a weather-proof vault or contained in the base of the support structure.
 - 6) All accessory equipment not directly attached to the wireless antennas shall be installed underground in waterproof vaults.

7) All transmission or distribution cable or fiber shall be installed underground.

6) New Structures in the Public Rights-of-Way

- a) Any variance or relief from the following standards must be requested in writing, including a written justification demonstrating sufficient reason for the variance or relief to be granted.
- b) Any relief or variance granted may contain one (1) or more conditions;
- c) New support structures shall, at the Planning Director's option, be hollow metal or made of a non-conductive, non-corrodable material of sufficient interior diameter to accommodate inside it the antenna(s) and all cabling or wiring attached to the antenna, and shall be of a color in harmony with the surrounding area or neighborhood that is acceptable to the Planning Director;
- d) Height: No support structure, regardless of the type of structure, may i) be taller than the immediately adjacent utility poles or public lighting structures; or ii) the lesser of the maximum permitted height for the zoning district in which it is located or fifty feet (50') in total height, including any attachments of any kind associated with the Wireless Facility;
- e) Not recognizable: A small wireless facility shall not be easily recognizable as a wireless facility by a layperson;
- f) Placement of antenna(s): All antennas, cabling and equipment directly associated with the antennas shall be contained inside the new support structure;
- g) No antenna shall be mounted on the side of a utility or light pole, and any antenna that for justifiable reasons is not able to be contained inside the support structure shall be mounted so as to be the least visually intrusive reasonably possible given the facts and circumstances;
- h) Lateral protrusion: No antenna or equipment directly associated with an antenna shall protrude laterally beyond the outer diameter of the support structure, unless relief is requested in writing and approved;
- i) Accessory equipment: All accessory equipment not directly attached to the antennas shall be installed underground in a weatherproof vault;

- j) Any new support structure shall be designed as a decorative structure and shall be in keeping with the nature and character of the surrounding area or neighborhood;
- k) No antenna shall be larger than two feet (2') in height with no portion extending laterally beyond the diameter of the structure as measured at the point of attachment to the structure;
- l) For any light pole that has an existing extending arm for the light fixture, unless mounted inside the pole or on the top of the pole, shall be mounted so as not to be easily distinguishable from the light fixture.
- m) If externally mounted, the point of attachment to the top of a structure shall not be more than three inches (3") below the bottom of an antenna, and the space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
- n) Antennas and any exposed element of such shall be of a color that as closely as is reasonably possible matches that of the support structure.
- o) All equipment other than the antenna(s) shall be placed underground in a weatherproof vault or contained within the base of the support structure.
- p) A permit for any wireless telecommunications facility shall be valid for a period of ten (10) years, unless it lapses or expires sooner or is revoked.
- q) Pursuant to the preceding subsection (g), at the end of ten (10) years from the date of issuance, such permit shall automatically expire.
- r) A permittee may apply for a new permit within the one hundred and eighty (180) days prior to expiration. Said application and proposal shall comply with the City's then-current code requirements for wireless telecommunications facilities.

7) Non-Conforming Wireless Facilities in the Public Rights-Of-Way

- a) Non-conforming wireless facilities are those facilities that in one or more ways do not conform to this Chapter.
- b) Non-conforming wireless facilities shall, within ten (10) years from the date such facility becomes nonconforming, be brought into conformity with all requirements of this Chapter; provided, however, that should the owner desire to expand or modify the facility, intensify the use, or make some other change in a conditional use, the owner shall comply with all

applicable provisions of this Chapter at such time, to the extent the City can require such compliance under federal and state law.

- c) An aggrieved person may file an appeal of any decision of the Planning Director made pursuant to this section to the City Council. In the event of an appeal alleging that the ten (10) year amortization period is not reasonable as applied to a particular property, the City Council may consider i) the amount of investment or original cost; ii) present actual or depreciated value; iii) dates of construction; iv) amortization for tax purposes; v) salvage value vi) remaining useful life; vii) the length and remaining term of the lease under which it is maintained, if any; and viii) the harm to the public if the structure remains standing beyond the prescribed amortization period, and may set an amortization period accordingly for the specific property.

8) Construction on Private Property

a) New Structures.

Notwithstanding the requirements for new structures in public rights-of-way, the following shall apply to new structures on private property.

1. No new tower of any kind that is built to accommodate a small wireless facility may be built in a single- or multi-family residentially zoned district or neighborhood, or within one-thousand feet (1,000') of the border of such a district or neighborhood. Notwithstanding anything to the contrary as regards compatible use designation, this requirement shall not be deemed in violation of any compatible use law, rule or regulation.

2. Aesthetics/Appearance:

- a) Height: The maximum allowed height for new support structures, but not an as-of-right height, shall be:

- 1) The lesser of i) the maximum height permitted for the zoning designation in which it is to be located; or ii) fifty feet (50') above existing pre-construction grade level on non-residential private property:
- 2) The lesser of fifty feet (50') above existing pre-construction grade level, or on residential property the lesser of the height of the nearest existing street light structure or thirty-five (35') above existing grade level.

3. The support structure shall

- a) be a hollow, non-wooden, non-corrodable structure of sufficient interior diameter to accommodate the antenna(s) and cabling or wiring inside it, and shall be of a color acceptable to the Planning Director;
 - b) not be more than three inches (3") below the bottom of an antenna that is attached to the top of the structure, and the space between the top of the structure and the attachment point of the antenna shall be concealed with a weather-proof material the same color as the structure or the antenna;
4. Antennas shall be no larger than two feet (2') in height with no portion extending laterally beyond the diameter of the structure at the top of the structure at the point of attachment;
 5. Antennas shall be of a color that as closely as is reasonably possible matches that of the support structure.
 6. All equipment other than the antenna(s) shall be placed underground in a weather-proof vault or contained in the base of the support structure.

Section 10-16.114 Procedural Requirements before Action on any Application Taken

- a) The City will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- b) The City may refer any Application or part thereof to any advisory committee or consultant for a non-binding recommendation.
- c) Either after the public hearing, if a hearing is required, or after Administrative review as applicable, and after formally considering the application, the City may (1) approve; (2) approve with conditions; or (3) deny a permit or administrative authorization. The decision shall be in writing and shall be supported by substantial evidence contained in a written record. Throughout the application and permitting process, the burden of proof for compliance with this Chapter or the need for something not allowed, shall always be upon the applicant.
- d) All application approvals shall contain various written conditions of approval that are required (1) prior to building permit issuance, and (2) prior to final inspections / certificate of completion
- e) If the city approves the special use permit or administrative special use permit for the facility, then a notice of decision shall be posted within a public area of City Hall and mailed to the applicant within ten (10) working days of the City's action. the special use permit or administrative special use permit shall be effective ten (10) working days after the posting or mailing of the approval decision.

- f) If the City denies the special use permit or administrative special use permit for the facility or the modification, then the applicant shall be orally notified of such denial with specific reasons for such denial by the Planning Department or at the Commission Meeting depending on the reviewing body, and in writing within 30 calendar days of the decision, and shall set forth in writing the reason or reasons for the denial.
- g) Any discretionary decision may be appealed by the applicant or any person affected by a determination or decision. Discretionary decisions made by the Planning Department are appealable to the Planning Commission while Planning Commission decisions are appealable to City Council as outlined in the City of Hercules Zoning Chapter 44.

Section 10-16.115 Procedural Requirements for Granting a Special Use Permit

- a) In addition to the above listed Section 10-16.113, “Procedural Requirements before Action on any Application Taken,” the following procedures shall apply where a special use permit is requested
- b) The City shall schedule a public hearing(s) once it finds the application is complete (and that the applicant has held a community outreach meeting) and there are no issues of non-compliance with applicable law, rule or regulation. The City is not required to set a date if the Application is not complete or if there are unresolved issues of non-compliance. The City may, at any stage prior to issuing a special use permit or administrative special use permit, require such additional information as it deems necessary and is not prohibited from requiring as it relates to the issue of the siting, construction or modification of or at a wireless facility.
- c) Required Findings: Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City must make the following findings prior to approving a special use permit, unless there is clear and convincing technical evidence that the requirements in the Chapter are not possible to achieve or relief has been requested and an exception is warranted based on the facts and environmental/ technical circumstances involved:
 - 1) The facility does not conflict with safety and safety-related codes and requirements;
 - 2) The facility conforms to the City’s policy of concealment;
 - 3) The facility does not conflict with the historic nature or character of a neighborhood or district;
 - 4) The use or construction of the facility is not contrary to an already stated purpose of a specific zoning or land use designation;
 - 5) The placement and location of the facility does not create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;
 - 6) The placement and location of a facility does not result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;
 - 7) The facility does not conflict with the provisions of this Chapter;

Section 10-16.116 Reasons for Denial

- a) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the City may disapprove an application for any of the following reasons:
 - 1) Conflict with safety and safety-related codes and requirements;
 - 2) The facility would not conform to the City's policy of concealment;
 - 3) Conflict with the historic nature or character of a neighborhood or district;
 - 4) The use or construction of facilities is contrary to an already stated purpose of a specific zoning or land use designation;
 - 5) The placement and location of facilities would create an unacceptable safety or financial risk to residents or the safety of the general public, employees and agents of the City or employees of the service provider or other service providers, or the reasonable probability of such;
 - 6) The placement and location of a facility would result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area;
 - 7) Conflicts with the provisions of this Chapter;

Section 10-16.117 Assignment/Transfer, Default/ Revocation, and Termination of Administrative Special Use Permits or Special Use Permits for Wireless Telecommunications Facilities

The extent and parameters of a special use permit or administrative special use permit for a facility shall be as follows:

- a) A special use permit or administrative special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the City, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.
- b) A transfer, assignment or other conveyance of the special use permit or administrative special use permit shall require the written commitment of the new holder of the special use permit or administrative special use permit to abide by all applicable laws, rules and regulations, including but not limited to this Chapter.
- c) If a support structure or facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Chapter or of the special use permit or administrative special use permit, then the City shall notify the holder of the special use permit or administrative special use permit in writing of such violation. A permit or administrative special use permit holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the City in a reasonable period of time the special use permit or administrative special use permit shall be subject to revocation.
- d) Following notice and an opportunity to cure, and if not cured, a special use permit or administrative special use permit granted under this Chapter may be revoked, canceled,

or terminated for a violation of the conditions and provisions of the special use permit or other applicable law, rule or regulation, and if warranted the payment of a fine(s) as shown in the penalty provisions of this Chapter.

- e) If not cured within the time frame set forth in the notice of violation, a hearing shall be held upon due prior notice to the applicant citing the violation(s) and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the special use permit and property owner of record.
- f) Following the original notice and an opportunity to cure as relates to a given Facility, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines.

Section 10-16.118 Responsible Party(s)

The owner(s) of a facility, including any support structure used to accommodate wireless facilities and equipment, and the owner of the land upon which a facility or support structure is located, shall at all times be jointly and severally responsible for: (a) the physical and safe condition of the facility and all components on the site related to the facility; (b) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the facility, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the facility; and (c) assuring the proper permitting as required by this Article and other City regulations by all owners of equipment, lessees and users of the facility, including but not limited to any upgrades and/or modifications of equipment. Said owner(s) shall monitor activities at the site to assure that the facility is operated in compliance with this Chapter, other City regulations, and any City issued special, administrative or conditional use permits or building permits.

Section 10-16.19 Removal and Performance Security

- a) **Support Structure Removal and Performance:** The applicant and the owner of record of any proposed new tower or support structure shall, at its sole cost and expense, be required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in an amount of at least seventy-five thousand dollars (\$75,000) for a tower or other support structure and with such sureties as are deemed adequate by the City to assure the faithful performance of the terms and conditions of this Chapter and conditions of any special use permit issued pursuant to this Chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.
- b) **Attachments Performance Security:** The owner of any equipment attached to a support structure shall be required to execute and file with the City a bond or other form of security that is acceptable to the City as to the type of security and the form and manner of execution, in the amount of five thousand dollars (\$5,000).

Section 10-16.120 Liability Insurance

- a) A holder of a special use permit for a wireless telecommunications support structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below, or as modified from time to time by City Council usually in the form of a resolution:
 - 1) Commercial general liability covering personal injuries, death and property damage: two million dollars (\$2,000,000) per occurrence/\$4,000,000 aggregate; and
 - 2) Automobile Coverage: \$2,000,000.00 per occurrence/four million dollars (\$4,000,000) aggregate; and
 - 3) A three million dollar (\$3,000,000) umbrella coverage; and
 - 4) Workers' compensation and disability: statutory amounts.
- b) For a facility located on City property, the commercial general liability insurance policy shall specifically name the City and its officers, City Council, employees, Commissions and Committee members, attorneys, agents and consultants as additional insureds.
- c) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- d) The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days' prior written notice in advance of the cancellation of the insurance.
- e) Renewal or replacement policies or certificates shall be delivered to the City at least fifteen (15) days prior to the expiration of the insurance that such policies are to renew or replace.
- f) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen (15) days prior to the grant of the building permit, the holder of the special use permit or administrative special use permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.
- g) A certificate of insurance that states that it is for informational purposes only and does not confer rights upon the City shall not be deemed to comply with this Chapter.

Section 10-16.121 Indemnification

- a) Any application for wireless telecommunication facilities that is proposed to be located on City property shall contain a provision with respect to indemnification of the City. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City and its officers, City Council, employees, Commissions and Committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be

attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

- b) Notwithstanding the requirements noted in subsection (a) of this section, an indemnification provision will not be required in those instances where the City itself applies for and secures a special use permit for a wireless telecommunications facility.

Section 10-16.122 Security

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- a) All facilities, including antennas, towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be climbed or collided with; and
- b) Transmitters and telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

Section 10-16.123 Signage

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the tower owner(s) and operator(s)/carrier(s) of the antenna(s), property owner name, as well as emergency phone number(s) for all such parties. The sign shall be on the equipment shelter or cabinet of the applicant and must be visible from the access point of the facility and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Section 10-16.124 Reservation of Authority to Inspect Wireless Telecommunications Facilities

- a) In order to verify that the holder of a special use permit for facility and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct and operate such facilities in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Chapter, the City may inspect, or cause to have inspected by a third party, all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site, including but not limited to electrical service, wiring and components. Refusal to allow or grant access to a City representative or its designee upon reasonable notice shall be deemed a violation of this Chapter.

- b) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions pursuant to 10-16.128. Refusal to allow or grant access to a City representative or its designee upon reasonable notice shall be deemed a violation of this Chapter.

Section 10-16.125 Removal or Moving of Wireless Telecommunications Structures and Facilities

- a) If attached to an existing structure, unless the Planning Commission deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's facilities and equipment to be moved or relocated from one structure to another, or replaced by the construction of a new facility, without proof that not to be relocated to or replaced by a facility at another location would for technical reasons prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.
- b) If the lease for the existing co-location expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed only upon (1) the provision of convincing evidence satisfactory to the Planning Commission of the need to move or relocate the facility; and (2) convincing evidence satisfactory to the Planning Commission of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a wireless service provider or carrier or other lessee, shall not be deemed a permissible reason for relocating.
- c) The owner of any facility shall be required to provide a minimum of ninety (90) days written notice to the City Clerk, City Manager, Finance Director, Planning Director, and Mayor prior to abandoning any facility.
- d) Under the following circumstances, the City may determine that the health, safety, and welfare interests of the City warrant and require the removal of facilities.
 - 1) A facility has been abandoned (i.e. not used as a wireless telecommunications facility) for a period exceeding ninety (90) consecutive days or a total of one hundred-eighty (180) non-consecutive days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;
 - 2) A support structure or facility falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;
 - 3) A support structure or facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by the required special use permit or administrative special use permit, and the special permit or administrative special use permit may be revoked.
 - 4) If the City makes a determination as noted in subsections (d)(2) or (3) of this section, then the City shall notify the holder of the permit or administrative special use permit for the facility within forty-eight (48) hours that said facility is to be brought into compliance and conformity within 30 days or be removed as listed below (unless immediate health and safety risk exists).
 - 5) The holder of the special use permit or administrative special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated

structures and equipment from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability. Restoration shall be completed within ninety (90) days of receipt of written notice from the City. However, if the owner of the property upon which the facility is located wishes to retain any access roadway to the facility, the owner may do so with the approval of the City.

- 6) If a facility has not been removed, or substantial progress has not been made to remove the facility, within ninety (90) days after the permit holder has received notice, then the City may order officials or representatives of the City to remove the facility at the sole expense of the owner or special use permit holder.
- 7) If the City removes, or causes Facilities to be removed, and the owner of the Facility does not claim and remove the material from the site to a lawful location within ten (10) days, then the City may take steps to declare the facility abandoned, and sell it.
- 8) Notwithstanding anything in this Chapter to the contrary, the City may approve a temporary use permit/agreement for the facility for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected facility shall be developed by the holder of the special use permit, subject to the approval of the City, and an agreement to such plan shall be executed by the holder of the special use permit or administrative special use permit and the City. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the City may take possession of and dispose of the affected facility in the manner provided in this Chapter and utilize the performance and removal bond.

Section 10-16.126 Penalty

- a) In the event of a violation of this Chapter, or any special use permit or administrative special use permit or building permit issued pursuant to this Chapter, the City may impose and collect, and the holder of the special use permit or administrative special use permit shall pay to the City, fines or penalties as established by the City and as allowed by State law.
- b) Notwithstanding anything in this Chapter, the holder of the special use permit or administrative special use permit for a facility may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Chapter or any section of this Chapter. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit or administrative special use permit. Without limiting other remedies available to the City, the City may also seek injunctive relief to prevent the continued violation of this Chapter.
- c) Any person who violates any provision of this Chapter is liable in a civil action brought by the City Attorney on behalf of the City in the amount of one thousand dollars (\$1,000) for each such violation. Any person violating this Section shall be regarded as committing a separate offense on each day that the violation occurs or continues. If two (2) or more persons are responsible for any violation of the provisions of this Chapter, they shall be jointly and severally liable for the civil penalty set forth in this section. Amounts recovered under this Section shall be deposited into a fund carried upon the financial records of the City which shall be used exclusively for the maintenance and/or

removal of telecommunications facilities, including but not limited to equipment cabinets, in the City of Hercules.

- d) **Criminal Penalties for Violation.** A violation of any provision of this Chapter is an infraction punishable by (1) a fine not exceeding one hundred dollars (\$100) for the first violation; (2) a fine not exceeding five hundred dollars (\$500) for a second violation within one (1) year; and (3) a fine not exceeding one thousand dollars (\$1,000) for each additional violation occurring within one (1) year as defined in Government Code Section 36900(c). Any person violating this Section shall be regarded as committing a separate offense on each day that the violation occurs or continues. At the City Attorney's discretion, serious violations may be prosecuted as misdemeanors pursuant to Government Code Section 36900.
- e) **Injunctions.** In addition to all other actions and remedies, civil or penal, authorized by law, the City Attorney is authorized to file an action in court seeking injunctive relief to enjoin a violation of any provision of this Chapter or to prevent a threatened violation of any provision of this Chapter. The injunctive relief sought in any such action may be prohibitory, mandatory, or both. (Ord. 339 § 1 (part), 1997)

Section 10-16.127 Relief

- a) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Chapter shall address and identify such at the pre-application meeting. The relief or exemption must be contained in the submitted application for either a special use permit or administrative special use permit, or in the case of an existing or previously granted conditional use permit, or special use permit or administrative special use permit, a request for modification of the facility and/or equipment. Such relief may be temporary or permanent, partial or complete.
- b) If relief waiver, or exemption for any item or issue is not requested at the pre-application meeting and is requested after the submittal of the application, the City reserves the right to require a formal amendment of the application, including the payment of all fees and charges.
- c) The burden of proving the need for the requested relief, waiver or exemption shall be solely on the applicant.
- d) The applicant shall bear all costs of the City in considering the request and the relief, waiver or exemption.
- e) No relief, waiver or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the City, its residents and other service providers.

Section 10-16.128 Adherence to State and/or Federal Rules and Regulations

- a) To the extent that the holder of a special use permit or administrative special use permit for a wireless telecommunications facility has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a special use permit or administrative special use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal

agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

- b) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit or administrative special use permit for wireless telecommunications facilities, then the holder of such a special use permit or administrative special use permit shall conform the permitted facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Section 10-16.129 RF Emissions

- a) To assure the protection of the public health and safety, the City expressly reserves the right to require that an applicant, a user of a facility or the owner of the facility verify compliance with the FCC's regulations regarding RF emissions, either for individually-owned equipment or cumulatively for all equipment at the site, as may be deemed appropriate from time to time, but no longer than every five (5) years, and that all users of the facility cooperate with the party responsible for such verification.
- b) With respect to support structures other than towers, if any section or portion of the structure or the entire site or within one hundred (100) feet of the boundaries of the site, is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape as appropriate, as well as placing RF Radiation warning signs as needed and appropriate to warn individuals of the potential danger.

Section 10-16.30 Conflict with Other Laws

Where this Chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, State or Federal government, this Chapter shall apply.

Section 10-16.131 Definitions

For purposes of this Chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **“Accessory Facility or Structure”** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **“Administrative Special Use Permit”** means the official document or permit (processed by City Staff or their assignees in writing) by which an applicant can carry out an “Eligible Facility” project and then apply for a building permit.
3. **“Amend”, “Amendment” and “Amended”** mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
4. **“Applicant”** means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.
5. **“Application”** means all Necessary and *required* documentation that an Applicant submits in order to receive a Special Use Permit or a Building Permit for Wireless Telecommunications Facilities.
6. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals with a single transmit and a single receive connection. It is expressly not multiple antennas, even if such are contained in a single housing or radome.
7. **“Antenna Array”** is a set of individual **antennas** used for transmitting and/or receiving radio waves, connected together in such a way that their individual currents are in a specified amplitude and phase relationship.
8. **“City”** means the City of Hercules, California.
9. **“City Council or Council”** means the City Council of the City of Hercules.
10. **“Co-location”** means the use of an approved telecommunication structure to support Antenna for the provision of multiple wireless services.
11. **“Commercial Impracticability” or “Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”
12. **“Commission”** means the Planning Commission of the City of Hercules.
13. **“Complete” Application** means an Application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an Application and that all information is true, accurate and correct, and all deposits have been paid to the City.
14. **“Concealment”** means a physical design or treatment that minimizes adverse aesthetic and visual impacts on the view from land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a Wireless Telecommunications Facility, which shall mean the least visually and physically intrusive facility, so as to make it substantially invisible, and that is not technologically or commercially impracticable under the facts and circumstances.

15. **“DAS” or “Distributive Access System”** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.
16. **“Drive Test”** means measuring and assessing the coverage, capacity and signal strength or quality of service of a wireless service provider(s) using a mobile vehicle outfitted with drive testing measurement equipment.
17. **Eligible Facility** means an existing properly permitted wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a Substantial modification.
18. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
19. **“FCC”** means the Federal Communications Council, or its duly designated and authorized successor agency.
20. **“Height”** means, when referring to a Tower or wireless support structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
21. **“Maintenance”** means plumbing, electrical or mechanical work that may require a building permit, but that does not constitute a Modification of the Facility.
22. **“Modification” or “Modify”** means, the addition, removal or change of any of the physical and/or visually discernable components or aspects of a Wireless Facility with effectively identical components of the same weight and size or less, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, the color or materials of any visually discernable components, vehicular access, parking, and/or an upgrade or change-out of equipment for better or more modern equipment.. Modification and the type of Modification shall be defined as set forth in FCC Report and Order 14-153, as modified from time to time and incorporated herein by reference.
23. **“Necessary” or “Necessity” or “Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the Application. Necessary does not mean what may be desired, preferred or to comply with voluntary chosen company policies, preferences or standards.
24. **“NIER”** means Non-Ionizing Electromagnetic Radiation.
25. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
26. **“Facility”** See definition for ‘Wireless Telecommunications Facilities’.
27. **“Personal Wireless Services” or “PWS” or “Personal Telecommunications Service” or “PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
28. **“Repairs and Maintenance”** means the replacement or repair of any components of a wireless facility when the replacement is effectively identical to the component being replaced or for any matters that involve a change without the addition, removal or change of any of the physical or visually discernable components or aspects of a properly permitted Wireless Facility that will change the visible appearance of the facility from that originally permitted.

29. **“Small Cell”** means a low-powered RF node, the antennas of which are significantly smaller than tradition ‘macro site’ antennas and have a significantly smaller service area, typically anywhere from 10 meters to one half (1/2) mile.
30. **“Special Use Permit”** means the official document or permit (usually in the form of a Planning Commission or City Council Resolution) by which an Applicant is allowed to file for a building permit to construct and use a Facility as granted or issued by the City, including for a Substantial Modification. Prior to the implementation of this Chapter, a Conditional Use Permit process was utilized.
31. **“State”** means the State of California.
32. **“Structural Capability”** or **“Structural Capacity”**, notwithstanding anything to the contrary in any other standard, code, regulation or law, means up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.
33. **Substantial Modification** means a change or Modification that
 - a. increases the existing vertical height of the structure by the greater of (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or (c) existing the City’s maximum permitted height or
 - b. except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance within the City’s concealment requirements; or
 - c. increases the square footage of the existing equipment compound by more than 2,500 square feet.
34. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
35. **“Telecommunications Site”** See definition for Wireless Telecommunications Facilities.
36. **“Telecommunications Structure”** means a structure (i.e. building, utility poles, street lights or other similar structure) used to support equipment used to provide wireless communications.
37. **“Temporary”** means not permanent in relation to all aspects and components of this Chapter, something intended to, and that does, exist for fewer than ninety (90) days.
38. **“Tower”** means any structure designed primarily to support an antenna(s) for receiving and/or transmitting a wireless signal.
39. **“Wireless Telecommunications Facility or Facilities (WTF or WTFs)”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility”**. It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit, Towers of all types and kinds, and structures, including but not limited to buildings, church steeples, silos, water Towers, signs or other any other structure that is used or is proposed to be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and enclosures, cabinets and other structures associated with the Facility. It is a structure and facility, including a compound, intended for transmitting and/or receiving wireless

communications, including but not limited to radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless service, permitted by the FCC.