

## AGENDA FOR THE



### CITY OF PINOLE PLANNING COMMISSION REGULAR MEETING

**Monday, January 25, 2016**

**7:00 P.M.**

**City Council Chambers, 2131 Pear Street, Pinole, CA 94564**

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In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in a City meeting or you need a copy of the agenda, or the agenda packet in an appropriate alternative format, please contact the Development Services Department at (510) 724-9014. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Assistant listening devices are available at this meeting. Ask staff if you desire to use this device.

#### **CONSENT CALENDAR:**

All matters listed under the Consent Calendar are considered to be routine and non-controversial. These items will be enacted by one motion and without discussion. If, however, any interested party or Commissioner(s) wishes to discuss a consent item, it will be removed from the Consent Calendar and taken up in order after the last item under New Business.

#### **PROCEDURE FOR CONSIDERING AN AGENDA ITEM:**

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

For those items listed as Public Hearings, the Chair will open the public hearing and ask the applicant if they wish to make a presentation. 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 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.

**Note: No Public Hearings will begin after 11:00 p.m. Items still remaining on the agenda after 11:00 p.m. will be held over to the next meeting.**

#### **CITIZEN PARTICIPATION:**

Persons wishing to speak on an item listed on the Agenda may do so when the Chair asks for comments in favor of or in opposition to the item under consideration. After all of those persons wishing to speak have done so, the hearing will be closed and the matter will be discussed amongst the Commission prior to rendering a decision.

Prior to speaking on an item, you must fill out one of the speaker cards (available at the back of the Council Chambers) and hand it to the Secretary. If a number of persons wish to speak on an item, the Chair may limit each speaker to a set time period in which to address the Commission.

Any person may appeal an action of the Planning Commission or of the Planning Manager by filing an appeal with the City Clerk, in writing, within ten (10) days of such action. Following a Public Hearing, the City Council may act to confirm, modify or reverse the action of the Planning Commission or Planning Manager. The cost to appeal a decision is \$803.

**Note:** If you challenge a decision of the Commission regarding a project in court, you may be limited to raising only those issues you or someone else raised at the public hearing or in writing delivered to the City of Pinole at, or prior to, the public hearing.

**A. CALL TO ORDER**

**B. PLEDGE OF ALLEGIANCE AND ROLL CALL**

**C. CITIZENS TO BE HEARD:**

The public may address the Planning Commission on items that are within its jurisdiction and not otherwise listed on the agenda. Planning Commissioners may discuss the matter brought to their attention, but by State law (Ralph M. Brown Act), action must be deferred to a future meeting. Time allowed: five (5) minutes each.

**D. CONSENT CALENDAR:**

1. **Planning Commission Meeting Minutes from December 14, 2015**

**E. PUBLIC HEARINGS:**

1. **Design Review (DR 14-20) and Conditional Use Permits (CUP14-10 and 14-15) for Wireless Communication Facility Relocation.**

**Project Requests:**

Continued consideration of a design review request to construct a new approximately 70 foot pylon tower structure with wireless communication antennas and ground-based equipment areas and related use permits for the relocation of two existing wireless communication facilities within the project site; and consideration of a lot line adjustment / lot merger request for the approximately 1.9-acre site.

**Environmental Review:**

The City prepared a draft Mitigated Negative Declaration (MND) to identify the potential environmental impacts of the project. The Planning Commission will consider the adequacy of the draft MND and the related Mitigation Monitoring and Reporting Program (MMRP).

**Applicant:** Armstrong Development Properties, Inc.  
2400 Del Paso Road, Suite 140  
Sacramento, CA 95834

**Location:** Southeast corner of Appian Way and Canyon Drive, just north of Interstate 80 APNs 401-273-043, -044, -045, and -046 addressed as 1617 Canyon Drive

**Project Staff:** Mike Moore, Contract Planner

**2. Zoning Code Amendment 16-01: Medical Marijuana Cultivation**

**Request:** Consideration of a Zoning Code Text Amendment modifying Chapters 17.20 and Chapter 17.98 in order to disallow Medical Marijuana cultivation and delivery within the City of Pinole.

**Applicant:** City of Pinole  
2131 Pear Street  
Pinole, CA 94564

**Location:** Citywide

**Project Staff:** Eric Casher, Legal Counsel

F. **OLD BUSINESS:** None

G. **NEW BUSINESS:**

1. **Selection of Planning Commission Vice Chair**

H. **CITY PLANNER'S/COMMISSIONER'S REPORT:**

I. **COMMUNICATIONS:**

J. **NEXT MEETING:**

Planning Commission Regular Meeting, February 22, 2016 at 7:00PM

K. **ADJOURNMENT**

**POSTED:** January 21, 2016



**Winston Rhodes, AICP**  
**Planning Manager**

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**DRAFT**

**MINUTES OF THE  
PINOLE PLANNING COMMISSION**

**December 14, 2015**

**A. CALL TO ORDER: 7:03 P.M.**

**B. PLEDGE OF ALLEGIANCE AND ROLL CALL:**

Commissioners Present: Bender, Brooks, Kurrent, Martinez-Rubin, Tave,  
Thompson, Chair Toms

Commissioners Absent: None

Staff Present: Winston Rhodes, Planning Manager

**C. CITIZENS TO BE HEARD:**

There were no citizens to be heard.

**D. CONSENT CALENDAR:**

1. Planning Commission Meeting Minutes from November 9, 2015
2. Planning Commission Meeting Minutes from November 16, 2015
3. Approval of 2016 Regular Planning Commission Meeting Schedule

Commissioner Kurrent requested an amendment to lines 4 through 7 on Page 4 of the November 9, 2015 Planning Commission meeting minutes, to read:

*The solar panels would offset the property costs, not individual tenant bills; the third story units would still have a patio/balcony and the decking of the units of the three story buildings will be the only units affected as other buildings do not have the wooden decks on the first floor.*

Commissioner Thompson requested an amendment to lines 26 and 27 of Page 7, to read:

*Shade or weather resistant structure to be placed over the mail boxes with a weather protected bulletin board added to the area to notify tenants of potential actions.*

1 **MOTION** to approve the Planning Commission Meeting Minutes for November 9,  
2 2015, as modified.

3  
4 **MOTION: Kurrent**                      **SECONDED: Thompson**                      **APPROVED: 4-0-3**  
5 **ABSTAIN: Bender, Brooks, Martinez-Rubin**  
6

7 Commissioner Thompson requested an amendment to lines 37 and 38 on Page  
8 14 under City Planner's and Commissioner's Report of the November 16 meeting  
9 minutes, to read:

10  
11 He [Mr. Rhodes] acknowledged a standard sign could be explored;  
12 documents relating to larger and or complicated developments would be  
13 released for review earlier both to the Commission and to the public.  
14

15 Mr. Rhodes clarified the discussion related to the volume of material to review  
16 within a short period of time prior to a meeting, with no concurrence or direction  
17 from the Planning Commission to staff to clarify that information would be provided  
18 sooner, although he noted that had been done for this meeting. He stated the  
19 requested revision to the minutes would have an implication on staff and would be  
20 something he would have to discuss with the City Manager. While the matter had  
21 been discussed, not all Commissioners had been present at the November 16  
22 meeting, and there had been no concurrence on the direction to staff.  
23

24 Chair Toms understood the discussion related to the distribution of Planning  
25 Commission packets and that hard copies of documents such as Initial Studies,  
26 which had a 30-day review period, could be made available earlier. She  
27 recommended a sentence be added under the heading City Planner's and  
28 Commissioner's Report, as follows:  
29

30 *Commissioners discussed having environmental documents earlier.*  
31

32 Commissioner Thompson reiterated her concern with the volume of paperwork for  
33 the agenda item that had been discussed during the November 16 meeting, which  
34 information had been released to the public just days before the meeting date,  
35 particularly since some of the documents had been dated October 2015.  
36

37 Mr. Rhodes explained that oftentimes a document could be dated days, weeks, or  
38 months earlier in the case of an incomplete application or the process related to  
39 environmental documents prior to distribution to the full Commission. He stated  
40 that environmental documents would be provided as early as possible to allow  
41 ample time for review.  
42

43 **MOTION** to approve the Planning Commission Meeting Minutes for November 16,  
44 2015, adding the sentence *Commissioners discussed having environmental*  
45 *documents earlier* under the heading City Planner's and Commissioner's Report.



1                   **Project Planner: Mike Moore**

2                   Planning Manager Winston Rhodes introduced Contract Planner Mike Moore, MIG  
3                   Incorporated; and Nick Pappani, Raney Planning and Management.

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5                   Mike Moore, MIG Incorporated, presented a PowerPoint presentation on the  
6                   project requests, and reported the project had been reviewed by the Planning  
7                   Commission Development Review Subcommittee on November 19, 2015 when  
8                   numerous recommendations had been made, as outlined in the December 14,  
9                   2015 staff report.

10  
11                  Nick Pappani, Raney Planning and Management, outlined the California  
12                  Environmental Quality Act (CEQA) documents that had been prepared for the  
13                  project including the MND, the MMRP, and the Initial Study, along with the  
14                  technical analyses that had been prepared as part of the required environmental  
15                  review, and the mitigation measures contained in the MND and MMRP. No public  
16                  comment had been received during the public review period.

17  
18                  Steve Abrams, Abrams Associates Traffic Engineers, Inc., detailed the technical  
19                  traffic study that had been prepared in compliance with CEQA, Caltrans, City, and  
20                  general engineering practices. It had been concluded that based on the required  
21                  calculations used by the City the project was within the City's standards and would  
22                  not cause any intersections to exceed capacity or standards.

23  
24                  Responding to the Commission, Mr. Abrams clarified the turning movements for  
25                  trucks in and out of the project site; the location of the existing closest bus stop  
26                  and the fact there was no need for modification or widening; the Level of Service  
27                  (LOS) D for Appian Way at Tara Hills which was not expected to change as a  
28                  result of the project; the peak traffic; the parking; the drive through area; and the  
29                  pedestrian conditions.

30  
31                  Mr. Pappani clarified the eight-foot high retaining wall and concerns with the  
32                  potential impacts to adjacent residents; the screening of the retaining wall with  
33                  vegetation pursuant to the landscape plan; and that a final geotechnical report  
34                  would be required to finalize the design recommendations for the slope. He also  
35                  identified the Federal Communications Commission (FCC) public exposure limits  
36                  for Radio Frequency (RF) emissions, and stated an RF Emission Study had been  
37                  prepared by Hammett & Edison, identified as Appendix C to the Initial Study.

38  
39                  Mr. Rhodes stated the Hammett & Edison Study had analyzed the cumulative RF  
40                  impacts from both Verizon and T Mobile. Condition 31 required the applicant to  
41                  provide a cumulative RF report showing actual RF emission levels at maximum  
42                  power to confirm compliance with FCC safety thresholds prior to final inspection  
43                  and facility power-up. The purpose of the 70-foot high pylon tower structure with  
44                  wireless communications facilities was to adequately cover the area. He also  
45                  identified the trees to be protected on the project site and the table in the staff

1 report to identify the size and species to replace any trees to be removed.  
2 Mr. Moore identified the staff recommendations as follows:  
3

- 4 • Adoption of Resolution 15-16, With Exhibit A, Conditions of Approval and  
5 Exhibit B, Mitigation Monitoring and Reporting Program, A Resolution of  
6 the City of Pinole Approving a Mitigated Negative Declaration and  
7 Mitigation Monitoring and Reporting Program and Approving a  
8 Conditional Use Permit Request (CUP 14-09) Design Review Request  
9 (DR 14-19), and Variance Request (VAR 14-01), for an Approximately  
10 14,806 square foot CVS Pharmacy Building with a Drive-Through  
11 Window (APNs 401-273-043, -044, -045, and -046) Located Southeast of  
12 the Intersection of Appian Way and Canyon Drive.  
13
- 14 • Adoption of Resolution 15-17, With Exhibit A, Conditions of Approval, A  
15 Resolution of the City of Pinole Approving by Reference a Mitigated  
16 Negative Declaration and Mitigation Monitoring and Reporting Program,  
17 and Approving a Conditional Use Permit Request (CUP 14-10 and CUP  
18 14-15) and a Design Review Request (DR 14-20) For the Relocation of  
19 Two Existing Co-Located Wireless Communications Facilities to a 70-  
20 foot Pylon Structure Located on Property South of a New CVS Pharmacy  
21 Southeast of the Intersection of Appian Way and Canyon Drive (APNs  
22 401-273-043, -044, -045, and -046).  
23

24 Mr. Moore added that the Planning Commission had been provided the following  
25 information at the dais; design details for the 70-foot high pylon structure, CVS  
26 elevations, an e-mail from Commissioner Kurrent with six questions he had  
27 identified prior to the meeting including an attachment identified as "Responses to  
28 those Questions," and an errata to the Initial Study/MND which had addressed  
29 some of the questions raised by Commissioner Kurrent.  
30

### 31 PUBLIC HEARING OPENED

32  
33 JULIE ANN MARTIN, Armstrong Development, 2400 Del Paso Road, Suite 140,  
34 Sacramento, introduced the CVS development team in the audience; presented a  
35 PowerPoint presentation of the project; went through the elevations for the CVS  
36 building which had been reviewed on several occasions and which had added  
37 pitched roofs to add an enhanced design element; and stated that no signage had  
38 been proposed facing the neighbors of the adjacent properties. Several changes  
39 to the cellular tower had been made to accommodate the recommendations from  
40 the Planning Commission Development Review Subcommittee; a gateway feel  
41 had been added to the tower structure to add a welcoming factor to those entering  
42 the City from the freeway; and CVS had held a Neighborhood Open House on  
43 December 3 with notification to all neighbors within a 1,000 foot radius of the  
44 project site.  
45

1 Ms. Martin detailed the concerns raised by the neighbors during the December 3  
2 neighborhood meeting and reported that the applicant had agreed to the  
3 installation of bollards to stop any vehicles from entering the properties below; to  
4 install a privacy fence at store level to prevent views into neighbors' yards; and  
5 could install additional landscaping in the clearing to screen views of the 70-foot  
6 pylon tower structure. In response to the Commission, Ms. Martin explained that  
7 the privacy fence would likely be a wooden fence material, with the portion of the  
8 fence on CVS property to be maintained by CVS.  
9

10 A representative of Tait & Associates Civil Engineering and Environmental  
11 Services, identified a concrete drainage channel located along the rear of the  
12 residential area to be maintained on the residential properties. The representative  
13 identified Sheet C-0, an Existing Conditions Plan, which had shown the existing  
14 grading and noted that a grading plan had also been provided and had included a  
15 cross section of what had been proposed.  
16

17 Ms. Martin clarified the goal was to mask the retaining wall as much as possible  
18 from the views of the neighbors through the use of vines and the planting of trees.  
19 The trees would be located on the lower portion of the retaining wall. In addition to  
20 the neighborhood meeting, additional outreach had been conducted with those  
21 neighbors who had privacy concerns.  
22

23 TOM McIVER, On-Air LLC, representing Verizon Wireless, 465 First Street, West,  
24 Sonoma, reported that he had worked with the CVS Team on behalf of Verizon  
25 Wireless. He described the project as existing site relocations within a pre-existing  
26 network. With respect to Condition 27, he noted that his firm had been working  
27 with the CVS Team to reach an alternative, although the firm had a building permit  
28 for the existing installed diesel generator. The intent was to repurpose the  
29 equipment at the site as much as possible. He also defined an "Appleton Plug"  
30 which was placed on a site in the event of commercial power disruption to allow a  
31 portable diesel generator to be brought in for use. He affirmed, when asked, that a  
32 diesel generator in a self-contained unit had been found to be more reliable during  
33 a seismic event given that it provided a six-hour backup.  
34

35 Mr. McIver stated that the centerline of the antennas would be at 62 feet in height,  
36 which would allow for additional tenants at a lower height on the 70-foot high pylon  
37 tower structure in the future. He could not agree to a lowering of the height of the  
38 tower structure at this time given the absence of the RF Engineer to affirm that  
39 would be feasible for the required coverage. He acknowledged a request from the  
40 Planning Commission for a coverage map to show the height needed with the  
41 degradation, if any, if the tower structure were lowered in height, and a request to  
42 show why the 70-foot height was needed.  
43

44 Chairperson Toms clarified that the welcoming message on the pylon sign had  
45 been in response to discussions with the Planning Commission Development

1 Review Subcommittee which sought some sort of placeholder for a welcoming  
2 message and to ensure it could be viewed by passing motorists.  
3

4 DAVID ELIAS, ZON Architects, Inc., designer of the 70-foot high pylon tower  
5 structure, clarified that the location of the tower was not arbitrary and to change it  
6 would change the entire RF engineering for the site and affect the azimuths for  
7 Verizon and T-Mobile. The 70-foot height was required to prevent shadowing and  
8 obstruction to the desired coverage area. The building itself, its design, and the  
9 new location of the antennas necessitated the 70-foot height. Both Verizon and T-  
10 Mobile and their azimuths needed that height to provide the required coverage  
11 area and the tower could not be reduced and still be feasible unless the carriers  
12 agreed to the use of smaller antennas. Since most carriers were using the larger  
13 antennas, the intent was for the structure to be able to accommodate numerous  
14 antennas to avoid the need for additional structures throughout the City.  
15

16 OLIVER FONTANA, Verizon Wireless, explained that the size of the antennas had  
17 been an RF engineering decision; the greater the number of antennas the more  
18 diversity within the frequency. Fewer and smaller antennas had a narrow  
19 deployment of frequency. He stated the site had more through-put due to the  
20 proximity to I-80 and on-line trafficking.  
21

22 JAMES TILLMAN, Pinole, expressed concern with the cell on wheels (COW)  
23 facility; reported he had contacted WestCAT this week which had reported no  
24 input on the project; he had concerns with the existing bus stops in the area and  
25 the potential impacts with line of sight large truck movements and truck traffic in  
26 and out of the site; the volume of traffic on Henry Avenue, Ridgecrest Road, and  
27 Canyon Drive to the freeway and the potential conflicts with school traffic. He  
28 added that the area had been filled in the past with loam, a soft material that could  
29 be impacted by the construction of the buildings with a potential for sliding; and  
30 expressed concern with the potential RF exposure to nearby residents.  
31

32 Mr. Tillman also questioned the planning process and noted that he had provided  
33 written comments to both the Planning Commission and the City Council. He  
34 asked the Planning Commission to read into the record his comments given his  
35 understanding the lot line adjustment would make two parcels, separate and apart  
36 for two different property owners, which he suggested was a form of subdivision.  
37 He added that the lot line adjustment application was incomplete and needed  
38 variance and use permit requests.  
39

40 Chairperson Toms defined the four legal lots and the lot line adjustment for four or  
41 fewer lots, which involved an administrative action, and which was exempt from  
42 the Subdivision Map Act.  
43

44 Mr. Rhodes advised that Mr. Tillman's letter was available on-line and had been  
45 included in the record. He explained that there had been direct communication

1 with WestCAT staff about the site and whether a turnout was needed to  
2 accommodate one bus or two. WestCAT had stated that would not be necessary  
3 based on the volume of the road and ridership. Staff had also sent the  
4 environmental document and a copy of the Planning Commission packet for this  
5 meeting directly to WestCAT staff.  
6

7 Responding to the comments in Mr. Tillman's correspondence, Mr. Rhodes stated  
8 an Initial Study/MND had been prepared; staff had outlined in its PowerPoint  
9 presentation the planning process for the projects including the lot line  
10 adjustment/merger of the parcel lines; copies of the environmental documents had  
11 been made available to the public; no comments from the public had been  
12 received; the public notice for the public hearing had been expanded and was  
13 beyond what was required by the Pinole Municipal Code (PMC); a reciprocal  
14 parking cross access agreement would be required as a condition of approval for  
15 the project; the variance was only related to the distance from the drive through  
16 from a residential area and the findings had been included in the staff report; the  
17 building would block any noise from the drive through window; use permits were  
18 required for the drive through and wireless communication facilities and the  
19 standards had been met for those uses; the temporary COW facility was allowed  
20 to be on-site for no more than six months; and the applicant would be required to  
21 provide an RF study to ensure compliance with FCC standards. The footprint for  
22 the COW would be located on the southeast corner of the site, to be refined based  
23 on the RF study.  
24

25 Mr. Tillman did not oppose the project but preferred to see the cellular antennas on  
26 the building, not on a tower; preferred to see a City of Pinole logo and name of the  
27 City on the tower structure; and questioned how citizens could be involved in the  
28 Planning Commission Development Review Subcommittee. He asked that the  
29 project be tabled to allow the questions from the Planning Commission and the  
30 public to be answered, preferably after the holidays.  
31

32 Chairperson Toms reported that the Planning Commission Development Review  
33 Subcommittee was comprised of two Planning Commissioners who met directly  
34 with staff on an as-needed basis. The meetings were not considered to be public  
35 meetings under the Brown Act and the results of the meetings had been  
36 summarized in the staff report.  
37

38 ANTHONY GUTIERREZ, 3805 Pinole Valley Road, Pinole, expressed concern  
39 that staff reports for the last two Planning Commission meetings had not been  
40 adequately and timely available to the public, and had been in excess of 500  
41 pages in length. Although the materials had been available on-line, he stated not  
42 everyone had access to a computer. He asked that the staff reports be made  
43 available to the public a week before the actual meeting date to allow sufficient  
44 time for review. He also expressed concern with the undocumented fill portion of  
45 the land, which was currently situated adjacent to the present building, and with

1 the new building to sit directly on top of the fill area raising concerns with the  
2 potential for landslides. He questioned whether a soils sample had been done for  
3 the previous fill; expressed concern with the lack of a mock-up for the 70-foot high  
4 tower structure; referenced studies done in Germany and Israel which had found  
5 that residing 400 meters from a cell tower increased one's risk of cancer; noted the  
6 FCC had stated the 1996 Telecommunications Act requirements were outdated  
7 and based on outdated studies that had only taken into account thermal effects  
8 and studies had since found biological effects on humans, plants, and wildlife;  
9 expressed concern with the proximity of the temporary COWs to nearby residents;  
10 and the proximity of the permanent installation which would be approximately 300  
11 feet from residents placing them at risk from electromagnetic field (EMF)  
12 emissions.

13  
14 VICTOR BERUMEN, 1568 El Toro Way, Pinole, identified his property as located  
15 in the cul-de-sac of El Toro Way. He questioned the long-term durability of a  
16 wooden fence material and inquired of the length of the fence between the site  
17 and the neighbors. He understood the retaining wall would be at ground level,  
18 although the neighbors' sought something that would prevent views over the wall  
19 into the neighbors' yards, which request had been communicated to CVS.  
20

21 Mr. Rhodes explained that the environmental documents had been available to the  
22 public for 30 days in hard copy and electronic formats; no public comments had  
23 been received nor had there been a request for hard copies from the public during  
24 the 30-day review period; information could be provided sooner but would require  
25 a reschedule of the meetings with more lead time and at the discretion of the  
26 Planning Commission; the information was required to be provided in advance of  
27 the meeting date, which had been done electronically and in a hard copy format; a  
28 mock-up of the cell site had not been prepared since it was not a new cell site but  
29 a relocation of an existing cell site; and a mock-up of a 70-foot high structure would  
30 be difficult to assemble and then remove for a temporary period of time to allow  
31 the public a sense of bulk.  
32

33 Mr. Pappani clarified that geology and soils had been addressed in Section 6 of  
34 the Initial Study and the report had identified undocumented fill on the site, which  
35 was not uncommon on sites that had been previously developed. The  
36 geotechnical report had included recommendations to be followed during  
37 construction to ensure no adverse impacts to proposed structures, with mitigation  
38 measures identified for the undocumented fill. On-site samples and borings had  
39 been conducted on-site. RF emissions had been addressed in the hazard section  
40 of the Initial Study, and relied on an analysis prepared by Hammett & Edison.  
41

#### 42 REBUTTAL:

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44 Ms. Martin advised that CVS would like to work with the neighbors on their  
45 concerns with the retaining wall but it would be difficult to identify where the wall

1 would run at this time. CVS was committed to a privacy fence and had  
2 recommended wood fencing to avoid the creation of a larger structure given the  
3 retaining wall and secondary block wall.  
4

5 Mr. Rhodes affirmed, when asked by the Chair, that the public hearing could be  
6 closed and the item could be continued to a date certain if that was the consensus  
7 of the Planning Commission. The public hearing could be re-opened when the  
8 item was next considered.  
9

10 Chair Toms closed the PUBLIC HEARING at this time.  
11

12 The Planning Commission discussed the application and offered the following  
13 comments, concerns, and/or direction to staff:  
14

- 15 • Concern expressed with the proposed wood fencing material since there  
16 had been some agreement during the Planning Commission Development  
17 Review Subcommittee discussions that the fence would not consist of a  
18 wood material due to the maintenance factor;  
19
- 20 • Recommendation for the applicant and the neighbors to continue a  
21 dialogue on the fencing material to reach mutual agreement;  
22
- 23 • Request for clarification that the fence would screen the lights of vehicles on  
24 the road;  
25
- 26 • Chair Toms outlined the concerns and recommendations of the Planning  
27 Commission Development Review Subcommittee;  
28
- 29 • Commissioners were not convinced school drop-off would occur on the site;  
30
- 31 • Recognition of the concerns with respect to truck traffic, particularly 18-  
32 wheeler trucks which would occur three times a week; [Toms, Kurrent] were  
33 of the opinion that would not be an issue in that there would be sufficient  
34 room to maneuver, and there was confidence with the Engineering  
35 Department that component of the project design met the City's code;  
36
- 37 • Hours of truck delivery had been stated by the applicant to occur between  
38 7:00 A.M. and 7:00 P.M.;  
39
- 40 • Recommendation for more discussion and review for a fence at the top of  
41 the retaining wall which had not been discussed by the Planning  
42 Commission Development Review Subcommittee, and which would need to  
43 meet the needs of the neighbors;  
44
- 45 • Support for the design of the 70-foot pylon tower structure to be left, as

1 designed [Brooks], although the majority of the Commission raised concern  
2 with the height and aesthetics, as proposed, on a promontory hill;  
3

- 4 • Disappointment expressed by Commissioners that there had not been more  
5 validation of the 70-foot high pylon tower structure, with a specific request to  
6 review the coverage; a recommendation for a condition that the applicant  
7 present to the Commission evidence that the 70-foot high pylon tower  
8 structure was justified; and that a shorter height of the tower would not be  
9 adequate for the desired coverage;
- 10
- 11 • The proposed diesel generator was close to the intersection of the freeway  
12 and some Planning Commissioners saw no problem with its use in the  
13 proposed location;
- 14
- 15 • Concern expressed for relying on natural gas for the generator in the event  
16 of a disaster [Martinez-Rubin, Toms];
- 17
- 18 • Concern with the right turn pursuant to the plans and the potential  
19 reoccurrence with what had happened with the Pinole Valley Shopping  
20 Center and modifications to the existing curb cuts;
- 21
- 22 • Concerns with respect to the landscape plan and the potential need to  
23 relocate trees;
- 24
- 25 • Recommendation to revise Condition 21 to add language that either the  
26 Planning Commission or the Department of Development Services shall  
27 determine adequacy of landscaping and fencing to shield retaining walls  
28 and buildings from surrounding residential properties;
- 29
- 30 • Commissioners were in agreement that documentation related to projects,  
31 particularly environmental documents, be provided in a timely manner as  
32 early as possible prior to the scheduled meeting date;
- 33
- 34 • Acknowledgement of the public concerns with respect to RF emissions  
35 although the law was clear as to what the Commission and the City may  
36 consider when discussing wireless telecommunication facilities; and  
37

38 Mr. Rhodes clarified that the first resolution to be considered by the Commission  
39 dealt with the CVS-requested land use entitlements, while the second resolution  
40 addressed the wireless communications facilities. The Commission could take  
41 action on the use permit portion of the wireless application and require that design  
42 review for the tower come back to specifically address the height issue.  
43

- 44 • Recommendation to change the welcome message on the pylon tower  
45 structure to read *Welcome to Pinole*, rather than "Welcome to Appian Way;"

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- Recommendation for the vertical trellis elements on the pylon tower structure to be more uniform and consistent on the tower and the CVS portion of the tower structure;
- Support for Option 1 for the design of the pylon tower structure;
- Recommendation for consideration of public art or a specific color for the proposed bollards;
- Clarification with the applicant the temporary COW would have permanent power, be self-contained, a mobile unit used to supplement the system if the main system was down, would have its own battery back-up in the event of an emergency, the primary purpose of the COW was to be used on a temporary basis for disasters, and the COW was owned by the carrier;
- Concern with truck traffic ingress/egress congestion and the proximity to the existing bus stop area;
- Recommendation for the pylon tower structure to match the building with an open trellis look to ensure consistency;
- Request for a cross section of the grading for the project, and request that staff provide such materials for future projects;
- Recommendation to restrict the delivery hours for trucks given the LOS D+ for one of the nearby intersections and the potential impacts from the future corridor freeway project;
- Request for a cross section for the proposed and existing grading line for the project;
- Request for a cross section to show the transition from the project to the neighbors' homes;
- Request for a photo simulation from the telephone pole looking up the hill, and from the freeway both at 60 and at 70 feet to allow a better illustration to show the mass of the design from the freeway;
- Staff identified the General Plan policies to encourage emergency communication cell sites and for ability to provide more information to the public; co-location of carriers was encouraged; and
- There was no consensus from the Commission to use natural gas as opposed to a diesel generator for the wireless communication facility,

1           although it was recommended that a natural gas option be considered.  
2 The following revisions were discussed and made to the resolutions under  
3 consideration:  
4

- 5           • Resolution 15-16: Condition 29 to be revised to add a sentence at the end  
6 of the last sentence, to read:  
7

8                           *Subject to review by the Development Services Department in*  
9                           *conjunction with the Planning Commission Development Review*  
10                          *Subcommittee.*

- 11           • Resolution 15-16: Two conditions had been shown for Condition 27, to be  
12 revised to read *Condition 27A and 27B*;  
13  
14           • Resolution 15-16: Typographical error identified on Condition 35;  
15  
16           • Resolution 15-16: Condition 47 revised to read:  
17

18                           *The facility shall be reviewed for consistency with the approved building*  
19                          *plans, and these conditions of approval, by the Planning Manager and*  
20                          *affected City staff.*  
21

- 22           • Resolution 15-17: Eliminate Condition 27.  
23  
24

25           **MOTION** to adopt Resolution 15-16, With Exhibit A, Conditions of Approval and  
26 Exhibit B, Mitigation Monitoring and Reporting Program, A Resolution of the City of  
27 Pinole Approving a Mitigated Negative Declaration and Mitigation Monitoring and  
28 Reporting Program, and the errata to the Initial Study/Mitigated Negative  
29 Declaration as provided at the dais on December 14, 2015, and Approving a  
30 Conditional Use Permit Request (CUP 14-09) Design Review Request (DR 14-19),  
31 and Variance Request (VAR 14-01), for an Approximately 14,806 square foot CVS  
32 Pharmacy Building with a Drive-Through Window (APNs 401-273-043, -044, -045,  
33 and -046) Located Southeast of the Intersection of Appian Way and Canyon Drive,  
34 subject to revisions to Conditions 27, 29, 35, and 47, as discussed.  
35

36           **MOTION: Kurrent**

**SECONDED: Brooks**

**APPROVED: 6-1**  
                  **NOES: Thompson**

37  
38  
39           **MOTION** to **continue** the adoption of Resolution 15-17, With Exhibit A,  
40 Conditions of Approval, A Resolution of the City of Pinole Approving by Reference  
41 a Mitigated Negative Declaration and Mitigation Monitoring and Reporting  
42 Program, and Approving a Conditional Use Permit Request (CUP 14-10 and CUP  
43 14-15) and a Design Review Request (DR 14-20) For the Relocation of Two  
44 Existing Co-Located Wireless Communications Facilities to a 70-foot Pylon  
45 Structure Located on Property South of a New CVS Pharmacy Southeast of the

1 Intersection of Appian Way and Canyon Drive (APNs 401-273-043, -044, -045,  
2 and -046), subject to the submittal of more information as to the necessity of the  
3 70-foot high pylon tower structure, to a date certain of January 25, 2016.  
4

5 **MOTION: Kurrent**                      **SECONDED: Thompson**                      **APPROVED: 7-0**  
6

7 Chair Toms identified the 10-day appeal process in writing to the City Clerk  
8 subject to the applicable appeal fee.  
9

10 **MOTION** to continue the Planning Commission meeting beyond 11:00 P.M. to  
11 address the remaining public hearing agenda item.  
12

13 **MOTION: Toms**                      **SECONDED: Kurrent**                      **APPROVED: 7-0**  
14

15 Chair Toms declared a recess at 11:10 P.M. The Planning Commission meeting  
16 reconvened at 11:15 P.M. with all Commissioners present.  
17

18 **2. Conditional Use Permit 15-04: BoxFit Cardio Boxing Training Facility**  
19

20 **Request:**

21 Consideration of a use permit request to open an approximately 2,700  
22 square foot cardio boxing training facility located within two vacant suites  
23 within an existing commercial building.  
24

25 **Applicant:** Dan Dunaway  
26 Dunaway & Associates  
27 27 Overhill Road  
28 Orinda, CA 94563  
29

30 **Location:** 701 Belmont Way Suites D and E, APN 403-070-034  
31

32 **Project Planner:** Winston Rhodes  
33

34 Mr. Rhodes presented the staff report dated December 14, 2015, and corrected  
35 a typographical error on Page 6 of the staff report which had mentioned a karate  
36 facility which was not part of the application. He recommended adoption of  
37 Resolution 15-18 to approve the application.  
38

39 Responding to the Commission, Mr. Rhodes clarified the parking accommodations  
40 and noted that shared parking agreements had been encouraged by the Pinole  
41 Municipal Code.  
42

43 The Planning Commission identified a typographical error on Condition 4 of  
44 Resolution 15-18, to be corrected by staff.  
45

1 PUBLIC HEARING OPENED  
2

3 DAN DUNAWAY, Dunaway & Associates, 27 Overhill Road, Orinda, identified the  
4 one accessible parking space pursuant to the plan with an additional van  
5 accessible parking space to be located in the shared parking lot between 701 and  
6 751 Belmont Way, in addition to the loading at the back of 751 Belmont Way. He  
7 explained that the facility would likely average between 30 and 35 students per  
8 day; the facility would not involve boxing matches or spectator sports; there would  
9 be a boxing/sparring ring for students or qualified athletes to spar with the  
10 instructors and each other; one to two professional boxers would be present every  
11 one to two hours; on average there would be four to six students per day; and no  
12 parking issues were anticipated.  
13

14 The Chair recommended that if parking became an issue the applicant could  
15 modify the hours of training sessions to avoid the same hours used by the nearby  
16 karate studio, and to avoid any in and out traffic conflicts.  
17

18 Mr. Dunaway stated the operator of the karate facility expected no conflicts given  
19 that the karate facility closed at 3:00 P.M. There were no plans for the facility to be  
20 open on the weekends, although that may be possible in the future, and Condition  
21 4 could be modified to allow the hours of operation Monday through Saturday  
22 rather than Monday through Friday.  
23

24 Mr. Rhodes identified Condition 8 which would address potential changes to the  
25 hours of operation.  
26

27 Mr. Dunaway affirmed that windows would be added to the San Pablo Avenue  
28 elevation of the building and the work was in progress, although it was not part of  
29 the proposed use permit.  
30

31 PUBLIC HEARING CLOSED  
32

33 **MOTION** to adopt Resolution 15-18, with Exhibit A, Conditions of Approval, A  
34 Resolution of the City of Pinole, County of Contra Costa, State of California,  
35 Approving a Conditional Use Permit (CUP 15-04) To Allow the Operation of an  
36 Approximately 2,700 Square Foot Boxing Fitness / Training Facility Within Suites D  
37 and E at 701 Belmont Way, APN 403-070-034, subject to a correction to the  
38 typographical error shown on Condition 4.  
39

40 **MOTION: Kurrent**                      **SECONDED: Thompson**                      **APPROVED: 7-0**  
41

42 Chair Toms identified the 10-day appeal process in writing to the City Clerk  
43 subject to the applicable appeal fee.  
44

45 **F. OLD BUSINESS:** None

1  
2 **G. NEW BUSINESS:** None

3  
4 **H. CITY PLANNER'S / COMMISSIONERS' REPORT:**

5  
6 Commissioner Brooks reported that he and Commissioners Martinez-Rubin and  
7 Tave had attended the Planning Commission Conference at Sonoma State.

8  
9 Chair Toms reported that there were You Tube presentations available on land  
10 use law and updates for interested Commissioners.

11  
12 Mr. Rhodes reported that there was money in the budget for local Planning  
13 Commission training opportunities that made the Sonoma State training  
14 opportunity possible. He updated the Commission on upcoming projects in 2016  
15 including text amendments related to the implementation of the Housing  
16 Element, and Medical Marijuana Cultivation. Future development projects  
17 included an eye surgery center to be located at the southeast corner of Henry  
18 Avenue and San Pablo Avenue near Kaiser. He also reported the Verizon  
19 Wireless project proposed for Pfeiffer Lane had been appealed to the City  
20 Council and a public hearing date had tentatively been scheduled for January 14,  
21 2016. In addition, the Gateway Shopping Center plans were in plan check with  
22 a grading permit to be issued in the near future.

23  
24 Commissioner Kurrent commended staff for the preparation of the meeting  
25 minutes which had summarized the Planning Commission denial findings for the  
26 Verizon Wireless application on Pfeiffer Lane.

27  
28 Mr. Rhodes recommended that a Planning Commission discussion on the  
29 availability of Planning Commission packets be agendized for a future meeting  
30 as a New Business item to solicit feedback from Commissioners on how to  
31 improve the flow of information.

32  
33 Chair Toms asked that hard copies be made available to the public and that a  
34 telephone number for staff be made available given the limited hours City Hall  
35 was open to the public.

36  
37 **I. COMMUNICATIONS:** None

38  
39 **J. NEXT MEETING:**

40  
41 The next meeting of the Planning Commission will be held on Monday, January  
42 25, 2016 at 7:00 P.M.

43  
44 **K. ADJOURNMENT:** 11:43 P.M.

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**Transcribed by:**

**Anita L. Tucci-Smith  
Transcriber**





# Memorandum

**TO:** PINOLE PLANNING COMMISSION

**FROM:** MIKE MOORE, CONTRACT PLANNER, MIG, INC.  
WINSTON RHODES, AICP PLANNING MANAGER

**SUBJECT:** PINOLE WIRELESS COMMUNICATION FACILITY RELOCATION

**DATE:** JANUARY 25, 2015

<b>Property Owner:</b> Mahmoud Namakina 1617 Canyon Drive, Suite 203 Pinole, CA 94564	<b>Applicant/Representative:</b> Armstrong Development Properties, Inc. 1375 Exposition Boulevard, Suite 101 Sacramento, CA 95815
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<b>FILE:</b>	CUP 14-10 and 14-15; DR 14-20
<b>LOCATION:</b>	Southeast corner of Appian Way and Canyon Drive, north of Interstate 80
<b>APN:</b>	401-273-043, -044, -045, and -046
<b>ZONING:</b>	Commercial Mixed Use (CMU)
<b>GP LU:</b>	Service Sub Area (SSA)

## REQUEST

This project request requires the following approvals:

### **Conditional Use Permits for:**

- The relocation of two existing co-located wireless communication facilities within the project site but on to a separate immediately adjacent parcel;

### **Design Review for:**

- A new approximately 61-foot-high pylon tower structure with wireless communication antennas;

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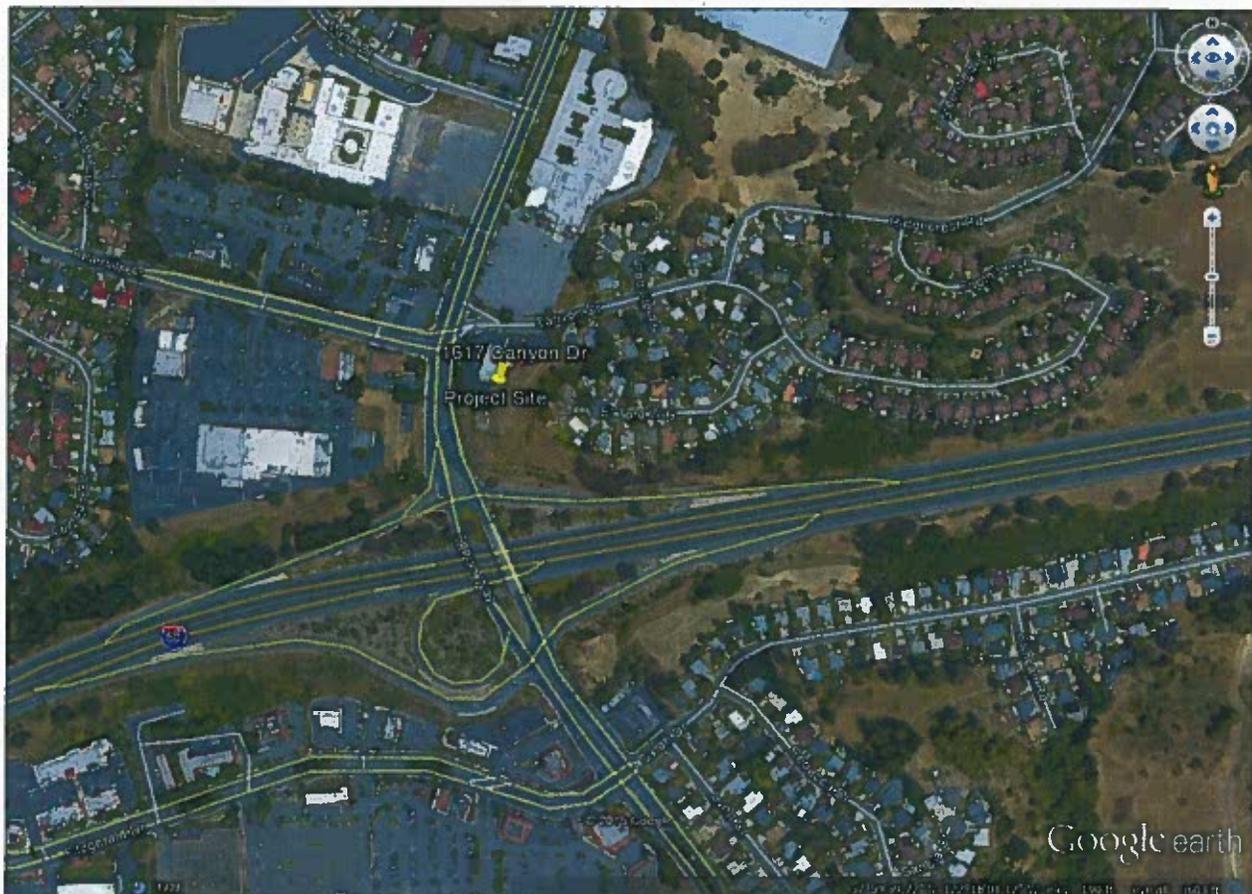
**STAFF RECOMMENDATION**

- 1) Adopt Resolution 16-01 approving a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (by reference) and approving the Design Review of an 61-foot pylon tower structure for wireless antennas and a Conditional Use Permit for the co-location of two existing wireless communication facilities.

**SITE LOCATION**

The approximately 1.9-acre site is comprised of four separate parcels located at the southeast corner of Appian Way and Canyon Drive, north of Interstate 80. Currently, there is an existing 12,000 square foot, three-story multi-tenant space office building and related parking on the site. Portions of the building are currently occupied. The building and site contain wireless communication antennas (12 building mounted and 4 rooftop) and related facilities (equipment storage and emergency power) leased by Verizon and T-Mobile. A portion of the site was also leased to a landscape business, but the remaining separate building on the site that housed the landscape business is now unoccupied. All of the existing structures on the site are to be demolished and/or removed. Access to the site is from existing driveways off of Canyon Drive. There is no direct vehicle access to the site from Appian Way due to significant elevation differences and the building site is well above the existing residential properties to the east.

**Figure 1 - Vicinity Map**



**Figure 2 - Site Location Map**



<b>Direction from Project Site</b>	<b>Land Use</b>
North	School, Vacant Medical Facility
West	Commercial
South	I-80 Corridor
East	Single-Family Residential

**PROJECT DESCRIPTION**

The proposed project was initially two separate considerations involving (1) the construction of a new CVS Pharmacy with an accompanying drive through and (2) the relocation of the existing Verizon and T-Mobile wireless communication facilities. At its meeting of December 14, 2015, the Planning Commission approved the Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program (MMRP), Conditional Use Permit, Variance and Design Review for the

new 14,806 square foot CVS Pharmacy and related site improvements. At that same meeting, the Planning Commission continued the public hearing to allow more time for consideration of the relocation of the existing T-Mobile and Verizon wireless facilities over concerns about the height and design of the proposed 70-foot pylon structure. The Commission requested that prior to the next hearing the applicant address the following design issues of the relocated wireless facility:

- Minimum functional height for the three proposed (two existing and one future) wireless communications antennas;
- Relationship between antenna structure height and wireless communication coverage; and
- Appearance of the structure from nearest residential areas and I-80.

In addition, the Commission requested that the applicant provide additional cross-sections to better illustrate the proposed grading of the slope adjacent to the residential area to the east of the CVS and pylon structure. The property line cross sections are attached (see Attachment can "D").

The affected wireless carriers – Verizon and T-Mobile – propose to install two portable wireless antenna arrays and equipment, known as "COWs" (Cell On Wheels), on the adjacent parcel to the south during a 6-month temporary transition period between the demolition of the existing office building (where the antennas are currently located) and the completion of the now proposed 61-foot pylon antenna structure that will camouflage and completely enclose the permanent antenna arrays of both carriers. Equipment and emergency power supplies will be installed at the base of the structure and will be enclosed and landscaped for safety and visual screening. The property on which the pylon structure will be located will be separate from the CVS property, but will only be accessible via the CVS driveway and parking lot. The CVS site plan anticipates this and includes the construction of a driveway from the CVS parking lot to the wireless equipment shelters. A condition of approval will require reciprocal parking and access easements so that Verizon and T-Mobile will be able to access and service their equipment and share three spaces with the CVS pharmacy located on the adjacent property.

The entire project site is currently comprised of four separate parcels. The project will also include the review and approval of a Lot Line Adjustment and Lot Merger to reduce the four existing parcels to two and revise or eliminate some of the existing property lines, accordingly, consistent with the approved site plan. Pursuant to the state Subdivision Map Act, Lot Line Adjustments and Lot Mergers are not subject to discretionary review by the Planning Commission and are reviewed and approved by staff based on their conformance with applicable zoning standards (e.g., minimum lot area and width) and the Planning Commission-approved site plan. Once approved by City staff, the revised lot descriptions are recorded to reflect the approvals. This process must be completed prior to the issuance of any building permits.

## **ANALYSIS**

### ***Three Corridors Specific Plan Conformance***

The project site is included within the "Three Corridors Specific Plan". As defined on page 5.0-21 of the Land Use and Economic Development Element of the General Plan, future development and redevelopment along the designated corridors – Pinole Valley Road, San Pablo Avenue and Appian Way – is intended to create "an opportunity to concentrate future

development, improve transit service by encouraging transit-oriented development projects, create more mixed-use development, and encourage redevelopment and substantial new economic investment over time." More specifically, the focus of the Appian Way Corridor is to "maintain and enhance the regional gateway area into Pinole and capitalize on freeway access to upgrade existing development and attract a desirable mix of commercial services and residential uses." The design of the proposed 61-foot pylon structure to house the wireless communication antenna arrays, is consistent with applicable site and development standards in the Specific Plan.

LAND USE POLICY 5            Support existing viable uses while encouraging a new mix of uses.

LAND USE POLICY 6            Actively promote the "revitalization" of underutilized land.

### **General Plan Conformance**

The project site is designated as Service Sub Area (SSA) in the City's General Plan. More specifically, the General Plan Community Services and Facilities Element includes policy language which supports improvements to wireless communication infrastructure within the City to help respond and recover in the event of an emergency; to provide easily accessible information about City actions, activities, and services; and to help conduct City business in an open, transparent, and efficient fashion. Relevant policy language is provided below which supports improvements to existing wireless communication networks within the City.

Policy CS.2.5            The City, its citizens, businesses and services will be prepared for effective response and recovery in the event of emergencies or disasters.

Action CS.2.5.4            Locate and design emergency buildings and vital utilities, communication systems and other public facilities so that they can remain operational during and after an emergency or disaster.

GOAL CS.11            Provide reliable communication and information management services to provide timely, easily accessible information about City actions, activities, programs and services.

Policy CS.11.2            The City will optimize Internet communication and other available media communication methods as a sustainable way to provide and receive information from Pinole citizens and as a means of conducting City business in an open, transparent and efficient fashion.

Policy CS.11.4            The City will strive to ensure reliable communications systems during natural and man-made emergencies.

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**Zoning Conformance**

**Wireless Communication Facilities**

Chapter 17.76 of the Zoning Code regulates development of wireless communications facilities within the City. This Chapter includes development standards by which to evaluate new wireless communications facilities. The pertinent development standards for the relocation of the existing wireless communication facilities are provided and discussed below.

1. All wireless telecommunication facilities shall comply with all applicable requirements of the current uniform codes as adopted by the city and shall be consistent with the general plan and this code, as well as other standards and guidelines adopted by the city, and all applicable state and federal law.

*A draft condition of approval has been included to assure that this standard is satisfied.*

2. All wireless telecommunication facilities shall comply at all times with the FCC rules, regulations, and standards, and any other applicable federal, state, or local laws or regulations.

*A draft condition of approval has been included to assure that this standard is satisfied. The Federal Communications Commission FCC regulates human exposure to radio frequency radiation.*

3. Sufficient anti-climbing deterrents, including warning signs (ANSI Standards C95.2-1982 Warning Symbol), shall be incorporated into the facility, as needed, to reduce the potential for trespass and injury.

*The proposed project equipment will be surrounded by chain-link fencing and landscaping to discourage trespassing. The facility is also located on private property. A draft condition of approval is included requiring the preparation of a security plan prior to the issuance of a building permit to prevent crime including trespassing both during construction and during the operation of the proposed communications facility.*

4. To minimize overall visual impact, all new wireless telecommunication facilities shall be co-located with existing facilities and with other planned facilities, whenever feasible. In addition, whenever feasible, service providers are encouraged to co-locate antennas with other facilities such as water tanks, light standards, utility poles, and other utility structures, where the co-location is found to minimize the overall visual impact. To facilitate co-location in appropriate cases, conditions of approval shall require all applicants to cooperate in the siting of equipment and antennas to accommodate the maximum number of operators at a given site. The applicant shall agree, in writing, to allow future co-location of additional antennas and not to enter into a lease for the exclusive use of the site.

*The proposed project includes the relocation of two existing wireless communications facilities from one portion of the project site to another and sufficient space for ground-based equipment and antennas for a future third carrier in an effort to retain co-location on site and allow for further future co-location should other wireless communication providers show interest.*

5. All wireless telecommunication facilities shall be located so as to minimize their visibility and utilize the latest technology available to minimize visual impacts.

*The antenna arrays for the two carriers – Verizon and T-Mobile - will be enclosed within a 61-foot pylon structure subject to design review approval by the City. The antennas will not be visible to the public. Ground mounted equipment will be screened by appropriate landscaping.*

6. Wireless telecommunication facilities shall be located, designed, and screened to blend with existing natural or built surroundings so as to reduce visual impacts of the technological requirements of the proposed wireless telecommunication facility and, in so far as possible, appear compatible with neighboring residences and the character of the community.

*The site location and project features are intended to have the site blend in with the existing surroundings. The proposed pylon structure is consistent in height, design, colors and materials to other structures in the vicinity used for freeway related signage.*

7. All related equipment shall have a non-reflective finish and shall be painted or otherwise treated to minimize visual impacts and placed in underground vaults whenever possible. All utilities (i.e., gas, electric, cable, phone, and water) shall be placed underground.

*A draft condition of approval has been included to utilize non-reflective paint finish on proposed equipment.*

8. All wireless telecommunication facilities that are not mounted on existing structures shall comply with at least one (1) of the following:

- a. Facilities shall be screened from the view of surrounding properties as much as possible and co-located with existing facilities or structures so as not to create substantial visual, noise, or thermal impacts;
- b. Facilities shall be sited within areas with substantial screening by existing vegetation;
- c. Facilities shall be designed to appear as natural features found in the immediate area, such as trees or rocks, so as to be effectively unnoticeable;
- d. Facilities shall be screened with additional trees and other native or adapted vegetation that shall be planted and maintained around the facility, in the vicinity of the project site, and along access roads in appropriate situations, where such vegetation is required to screen telecommunication facilities. Such landscaping, including irrigation, shall be installed and maintained by the applicant, as long as the entitlement is in effect; or
- e. Existing on-site vegetation shall be preserved or improved and disturbance of the existing topography shall be minimized. Landscaping shall be required in informal natural-looking clusters in the vicinity of any wireless telecommunication facility, in addition to screening of the facility.

*The proposed project, as conditioned, includes features that satisfy 8a, 8b, 8d, and 8e above.*

9. All proposed equipment cabinets/structures, accessory structures, and other related equipment shall be continuously maintained in good condition. This shall include keeping equipment cabinets and structures graffiti-free and maintaining all security fences and warning signs in good condition.

*A draft condition of approval has been added to satisfy this development standard.*

- 
10. The display of signs or advertising on wireless telecommunication facilities is prohibited.

*Display signs or advertising is not proposed.*

11. Exterior lighting shall not be allowed on commercial wireless telecommunication facilities except for that required for use of authorized persons on-site during hours of darkness or where the antenna structure owner or registrant is required to light the antenna structure by the terms of the FAA antenna structure registration applicable to the facility.

*No exterior lighting is currently proposed.*

12. Freestanding wireless telecommunication facilities shall not be located within the required setback of any residential development and shall be at least one-hundred (100) feet from a pre-existing residential use.

*The proposed facility is not located within required residential development setbacks and is more than 100 feet from the nearest residential use.*

13. All freestanding wireless telecommunication facilities shall be designed at the minimum functional height required for the coverage area unless it is determined that additional height is needed for architectural reasons or is part of a city-approved plan to reduce the impact(s) of future installations.

*The proposed 61-foot pylon structure is the minimum functional height required to serve the coverage area.*

14. In appropriate cases, the proposed wireless telecommunication facilities may be located on a city-owned or controlled property or within city rights-of-way, provided the appropriate applications are submitted, easements procured, and any other relevant procedures complied with.

*The proposed project is located on private property.*

The Chapter 17.76 of the City's Zoning Code includes development standards that apply specifically to free-standing projects proposed in open space areas. These pertinent development standards and how they relate to the proposed project are discussed below.

1. Wireless telecommunication facilities visible on or above a ridgeline or knoll, as shown on the General Plan Visual Resources Map, shall be prohibited unless, prior to approving the application, the designated approving authority determines that the applicant has demonstrated that there is no feasible alternative.

*The proposed project is not on or above a ridgeline or knoll depicted on the General Plan Visual Resources Map.*

2. All proposed wireless telecommunication facilities should be located within easy reach of existing access roads, whenever possible. Unless visual impacts can be adequately mitigated, no new access roads on a ridgeline or knoll shall be allowed with any proposed ground-mounted antenna.

*The proposed project site located near the intersection of Appian Way and Canyon Drive and is accessed through the proposed two-way driveway and parking lot of CVS. A condition of approval requiring a cross-easement agreement between CVS and the adjacent wireless facility site and a paved driveway will allow service vehicles for periodic site maintenance.*

3. All proposed wireless telecommunication facilities shall incorporate techniques and be designed as a stealth facility. Such techniques include camouflaging facilities to disguise and/or blend into the surrounding environment, or to disguise facilities as pieces of art or

---

sculptures, flag poles, telephone poles, light standards, or other visual forms to avoid an adverse visual impact.

*The applicant is proposing to contain the antennas in a pylon structure designed to appear similar to nearby commercial signs along the I-80 corridor.*

4. All related equipment shall be designed and located so as to minimize visual impacts and/or to be screened from public view. Screening techniques may include landscaping and/or architectural treatment to make them compatible with existing buildings and/or a partial or complete burial of the equipment.

*In addition to the proposed pylon structure, the proposed project would utilize landscaping and a site location above and away from public views to help minimize visual impacts.*

5. No wireless telecommunication facility shall be located within four hundred (400) horizontal feet of a major ridgeline and one hundred (100) horizontal feet of a minor ridgeline (as shown on Figure 10.4 of the General Plan) and within one hundred (100) vertical feet for both.

*The proposed project is not near a major or minor ridgeline.*

6. Development of a wireless telecommunication facility shall conform generally with the natural contours to avoid excessive grading.

*Only minimal site grading is required. A draft condition of approval has been added to the accompanying draft resolution requiring submittal of a detailed grading plan for review and approval prior to obtaining a building permit.*

## Design Review

Chapter 17.76, which sets forth the requirements for wireless facilities, states that "wireless telecommunication facilities shall be located, designed, and screened to blend with existing natural or built surroundings so as to reduce visual impacts of the technological requirements of the proposed wireless telecommunication facility and, in so far as possible, appear compatible with neighboring residences and the character of the community." To comply with these requirements, the applicant has proposed to enclose the relocated wireless antenna arrays within a pylon structure designed to appear similar to nearby free-standing commercial signs along the I-80 corridor. The ground-mounted equipment cabinets, generators and fuel tanks will be screened by adjacent landscaping and a site location that is away from public views. The project site is located on a separate piece of property immediate south of and adjacent to the proposed CVS Pharmacy. The principal structure on the property would be a 61-foot pylon structure (reduced in height from the originally proposed 70-feet) featuring two legs finished with stucco; a solid, flat top section (removing the terra cotta tile pitched roof on the original design) and two open trellises. The two open trellises would join the two legs in the top third of the structure and are above and below a solid "Welcome to Pinole" panel. The reduced height of the structure still provides the opportunity to co-locate additional carrier antennas within the structure.

As mentioned previously, Section 17.12.150 (H) identifies four criteria that must be considered by the Planning Commission "in conducting comprehensive design review." They are as follows and are addressed specifically regarding the proposed 61-foot pylon structure:

Considerations relating to site layout, the orientation and location of building, signs, other structures, open spaces, landscaping, and other development features in relation to the physical characteristics, zoning, and land use of the site and surrounding properties.

*The proposed pylon structure is consistent in design, materials to similar structures in the vicinity that are currently used as free standing signs for commercial uses along the I-80 corridor near Appian Way. The structure will not be used as a sign. The proportions of the structure are consistent with surrounding properties and the topography of the site and are able to provide suitable wireless coverage to the area. The reduced height (compared to the originally proposed 70-foot structure) also minimizes visual impacts along the I-80 corridor and to adjacent residential areas.*

Considerations relating to traffic, safety, and traffic congestion, including the effect of the development plan on traffic conditions on abutting streets, the layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, driveways, and walkways, the adequacy of off-street parking facilities to prevent traffic congestion, and the circulation patterns within the boundaries of the development.

*The project will not generate any significant additional traffic on abutting streets, nor create any safety concerns. The only traffic to the site related to the project will be periodic maintenance checks. The development of the site does not affect the access or parking serving the proposed CVS.*

Considerations necessary to ensure that the proposed development is consistent with the general plan and all applicable specific plans or other city plans, including, but not limited to, the density of residential units.

*As discussed previously in this report, the project conforms to the applicable policies of the Pinole General Plan, the Three Corridors Specific Plan and the applicable provisions of the Zoning Ordinance.*

Considerations relating to the availability of city services, including, but not limited to, water, sewer, drainage, police and fire, and whether such services are adequate based upon city standards.

*Project drainage will be designed and constructed in accordance with City standards. Water service is only required to serve the proposed landscaping on the site. A condition has been applied to the project requiring the preparation and approval of a safety plan in conjunction with the police.*

## **ENVIRONMENTAL REVIEW**

An Initial Environmental Study was prepared for the project (CVS and the wireless facility relocation and a 70-foot pylon structure) to satisfy California Environmental Quality Act (CEQA) requirements. Eight environmental factors were determined to be potentially impacted by the proposed project. These factors included aesthetics, biological resources, cultural resources, geology and soils, transportation and circulation, hazards and hazardous materials and noise. All of these factors were determined to be less than significant after mitigation measures were applied.

The Planning Commission approved the Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program as part of its approval of the CVS project on

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December 14, 2015. The City's environmental consultant, Raney Associates reviewed the proposed design and height revisions to the pylon structure and determined that the proposed revisions to the height and design of the pylon structure do not alter any of the conclusions of the Initial Study or the final determination of a Mitigated Negative Declaration. The attached Resolution approving the project references the Initial Study/Mitigated Negative Declaration and MMRP approved on December 14, 2015.

## **CONCLUSION**

The proposed project as conditioned is consistent with the City's General Plan and the Three Corridors Specific Plan and will improve wireless communication coverage and capacity within this portion of the City. The proposed project is also consistent with the Zoning Code development standards for wireless communications facilities, and meets all of the findings for the respective Design Review and Conditional Use Permit approvals.

## **ATTACHMENTS**

- A. Draft Resolution 16-02 Approving a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP) (by reference to the Resolution adopted by the Planning Commission on December 15, 2015) and the Design Review and Conditional Use Permit for the relocation of existing wireless communication facilities within a 61-foot pylon structure with Exhibit A: Conditions of Approval
- B. Proposed Pylon Design Information Received January 19, 2015
- C. Verizon Wireless Facility Coverage Maps and Photosimulation Information Received January 15, 2016
- D. Property Line Slope Cross Section Information Received January 15, 2016
- E. Project MND and MMRP Environmental Review Information (previously provided) and online: <http://www.ci.pinole.ca.us/admin/docs/plancom/2015/12-14-15.PDF>
- F. Initial Study Mitigated Negative Declaration Addendum
- G. James Tillman Project Questions with City Responses, January 21, 2015

**PLANNING COMMISSION RESOLUTION 16-01  
WITH EXHIBIT A: CONDITIONS OF APPROVAL**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PINOLE APPROVING BY REFERENCE A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM AND APPROVING CONDITIONAL USE PERMIT REQUESTS (CUP 14-10 and CUP 14-15) AND A DESIGN REVIEW REQUEST (DR 14-20) FOR THE RELOCATION OF TWO EXISTING CO-LOCATED WIRELESS COMMUNICATIONS FACILITIES TO A 61-FOOT PYLON STRUCTURE LOCATED ON PROPERTY SOUTH OF A NEW CVS PHARMACY SOUTHEAST OF THE INTERSECTION OF APPIAN WAY AND CANYON DRIVE (APN: 401-273-043, -044, -045, and -046)**

**WHEREAS**, Armstrong Development Properties, Inc. (hereinafter referred to as applicant) filed an application with the City of Pinole (hereinafter referred to as City) for conditional use permits (CUP 14-10 and CUP 14-15) and a design review request (DR 14-20) in order to relocate and operate two new wireless communications facilities and accompanying antennas within a 61-foot pylon structure along with related ground-based equipment located on property adjacent to a new CVS Pharmacy at the intersection of Appian Way and Canyon Drive (APN: 401-273-043, -044, -045, and -046) in accordance with Title 17 of the Pinole Municipal Code; and

**WHEREAS**, Verizon and T-Mobile currently operate co-located wireless communication facilities on and adjacent to an existing 3-story office building located on property at the southeast corner of the intersection of Appian Way and Canyon Drive; and

**WHEREAS**, the existing 3-story building and related improvements and structures on the site are to be demolished to make way for a new CVS Pharmacy and related improvements; and

**WHEREAS**, at the December 14, 2015 Planning Commission meeting, the applicant presented the request to relocate two existing wireless communication facilities and designate space for a third future facility on a parcel immediately south of the CVS Pharmacy building with wireless communications ground-based equipment areas and related antenna equipment within a new 70-foot pylon structure to improve wireless communication coverage and capacity along the Appian Way and I-80 corridors; and

**WHEREAS**, at the conclusion of the December 14, 2015 public hearing on the proposed relocation of wireless facilities, the Planning Commission continued any action on the item and directed the applicant to justify the proposed height a potentially revise the plans for the proposed pylon to reduce the overall height for minimal functional height; address how the change in height might affect wireless coverages in the affected area; and identify the potential visual impacts of the structure from the nearby El Toro Way residential cul-de-sac; and

**WHEREAS**, an Initial Study was prepared for a project comprised of both the relocation of the existing wireless communication facilities and the new CVS Pharmacy and the information and findings related to that Initial Study were considered and approved by the Planning Commission as part of its approval of the CVS Pharmacy applications on December 14, 2015 and are included in Resolution 15-16; and

**WHEREAS**, the Planning Commission of the City of Pinole is the appropriate authority to hear and take action on this project; and

**WHEREAS**, a notice of public hearing was distributed to all property owners of record within at least 500 feet of the project site and a notice was published in the December 4, 2015 edition of the West County Times as required by local and State law; and

**WHEREAS**, the Planning Commission has conducted a duly noticed public hearing to consider CUP 14-10 and CUP 14-15 and DR 14-20 on December 14, 2015 and January 25, 2016; and

**WHEREAS**, after the close of a duly noticed public hearing, the Planning Commission considered all public comments received both before and during the public hearing, the presentation by City staff, the staff report, and all other pertinent documents regarding the project Mitigated Negative Declaration and the proposed development project prior to taking action.

**NOW, THEREFORE**, the Planning Commission of the City of Pinole hereby finds, determines, and resolves as follows:

1. The Planning Commission has considered the full record before it, which may include but is not limited to such information as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. In accordance with the provisions of CEQA, an Initial Study/Mitigated Negative Declaration was prepared and properly circulated for public review wherein it was determined that project environmental impacts could be reduced to a less than significant level through implementation of project requirements and compliance with the MMRP and that the proposed revisions to the overall height and design of the proposed approximately 61-foot pylon would not affect any of the environmental conclusions of the previously approved Initial Study/Mitigated Negative Declaration, and hereby approves by reference the Mitigated Negative Declaration and the MMRP as described in Resolution 15-16 and the related MMRP in Exhibit B of said resolution and approved by the Planning Commission on December 14, 2015.
3. The proposed wireless communications facilities, as conditioned, are consistent with the City's General Plan and Municipal Code.
4. The establishment, maintenance, and operation of the proposed wireless communications facility, as conditioned, will not be detrimental to the health safety, peace, morals, comfort or general welfare of the persons residing or working in the vicinity of the project site or general welfare of the City of Pinole.
5. The site of the proposed wireless communications facility, as conditioned, is physically suitable for the type, density and intensity of use and related structures being proposed.
6. The proposed project, as conditioned, will not be contrary to the specific intent clauses, development regulations, or performance standards established for the zoning district in which it is located.

7. The proposed use and related structures, as conditioned, are compatible with other land uses, transportation and service facilities in the project vicinity.
8. The site layout, as well as the landscaping, lighting, and other development features, as conditioned, are compatible with and complement the existing surrounding environment and ultimate character of the area under the General Plan and the Three Corridors Specific Plan.
9. Hereby approves Conditional Use Permit 14-10 and Conditional Use Permit 14-15 and Design Review 14-20 as provided in the staff report, and subject to the Conditions of Approval attached as Exhibit A.
10. The approval of Conditional Use Permit 14-10 and Conditional Use Permit 14-15 and Design Review 14-20 shall terminate on January 25, 2017, unless exercised and actual construction or alteration under valid permits has begun within said period or a written request has been submitted to the City, prior to the expiration date, for an extension of time as allowed under the Zoning Ordinance.

The above action is final unless an appeal is filed pursuant to Chapter 17.10 of the Pinole Municipal Code within ten (10) calendar days following Planning Commission action.

**PASSED AND ADOPTED** by the Planning Commission of the City of Pinole on this 25<sup>th</sup> day of January 2016, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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David Kurrent, Chair, 2016-2017

ATTEST:

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Winston Rhodes, AICP, Planning Manager

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



	<u>Timing/ Implementation</u>	<u>Monitoring Department /Division</u>	<u>Verification (date and Signature)</u>
1.	On-Going	Development Services	
			If any of these conditions are found to be disregarded, the use permit for the wireless communication facilities will be subject to revocation pursuant to Section 17.10.120 of the Pinole Municipal Code. If necessary, the Planning Commission may modify the use permit or may revoke the use permit after holding a noticed public hearing and making applicable findings.
2.	On-Going	Development Services	
			The project shall be constructed and operated in substantial compliance with the approved wireless facility development plans date stamped received January 19, 2016 and the accompanying project description and material submitted for the Conditional Use Permit and Design Review request unless modified by the conditions of approval below.
3.	On-Going	Development Services	
			All mitigation measures included in the Initial Study/Mitigated Negative Declaration for the CVS / Pharmacy & Wireless Communication Facility Relocation project, adopted on December 14, 2015, and included in the Mitigation Monitoring and Reporting Program (MMRP) are hereby incorporated by reference as project conditions of approval and shall be included in project construction plans.

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



	<u>Timing/ Implementation</u>	<u>Monitoring Department /Division</u>	<u>Verification (date and Signature)</u>
4.	Prior to the issuance of a Building Permit and On-Going	Planning	
	The project shall be constructed and operated in a manner which is consistent with FCC rules, regulations and standards, and with all applicable federal, State, and local laws. Prior to the issuance of a Building Permit and annually thereafter, The Applicant and/or operators shall provide the Development Services Department, upon request, a monitoring report confirming that facility operations, including radio frequency (RF) emissions, are consistent with FCC requirements.		
5.	On-Going	Planning	
	The Applicant shall hold harmless the City, its Council Members, its Planning Commission, officers, agents, employees, and representatives from liability for any award, damages, costs and fees incurred by the City and/or awarded to any plaintiff in an action challenging the validity of this permit or any environmental or other documentation related to approval of this permit. Applicant further agrees to provide a defense for the City in any such action.		

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



	<u>Timing/ Implementation</u>	<u>Monitoring Department /Division</u>	<u>Verification (date and Signature)</u>
6.	All building permit drawings and subsequent construction shall substantially conform to the approved planning application drawings. The Planning Manager shall determine whether any modifications require additional approval of the Planning Commission.	Planning	
7.	Failure to obtain prior approval to modify the approved plans may result in having to pay double the original planning application permit fee and/or withholding of the final inspection until such time as the modification(s) to the plans has been reviewed and approved by the Planning Manager or the Planning Commission.	Planning	
8.	If the operation of the use results in conflicts pertaining to parking, noise, nuisance, traffic or other impacts, at the discretion of staff, the use permit may be referred to the Planning Commission for subsequent review at a public hearing and possible revocation in accordance with Title 17 of the Pinole Municipal Code.	Planning	

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



	<u>Timing/ Implementation</u>	<u>Monitoring Department /Division</u>	<u>Verification (date and Signature)</u>
9.	Subsequent facility modifications may be reviewed and approved administratively. The Planning Manager shall review plans and determine if an amendment to the Use Permit is required.	Planning	
10.	The applicant and property owner shall work cooperatively with the Police Department on an ongoing basis to establish an effective crime prevention strategy and implement security measures as needed.	Police	
11.	The project site shall include clearly displayed address signage information to facilitate timely emergency response.	Development Services, Fire and Police	
12.	The applicant shall keep the site clear of graffiti and repair any vandalism damage on a regular and continuous basis. Graffiti-resistant materials shall be used when feasible. All graffiti shall be removed within 72 hours.	Development Services and Police	

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



		<u>Timing/ Implementation</u>	<u>Monitoring Department /Division</u>	<u>Verification (date and Signature)</u>
13.	The applicant and property owner shall ensure that landscape material located in the vicinity of the pylon structure and equipment areas is well-maintained. Any landscaping planting material that dies shall be promptly replaced.	On-Going	Development Services	
14.	All proposed area fencing, equipment cabinets/structures and other related equipment shall be continuously maintained in good condition. This shall include keeping the tower structure and equipment cabinets graffiti-free and maintaining all warning signs in good condition.	On-Going	Development Services	
15.	The applicant shall submit for City review and approval a detailed site and improvement plan for the location of the two temporary "cell on wheels (cows)" facilities. Any temporary cell on wheels facility and accompanying temporary equipment shall be located on the project site for a maximum of 180 days.	Prior to Issuance of a Demolition Permit for the Existing Office building and related structures and for a maximum of 180 days.	Development Services	

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



	<u>Timing/ Implementation</u>	<u>Monitoring Department /Division</u>	<u>Verification (date and Signature)</u>
	<b>Prior to Issuance of Building Permit</b>		
16.	A Lot Line Adjustment and Lot Merger application shall be approved by the City and recorded with the Contra Costa County Recorders Office to reduce the existing 4 parcels comprising the site to 2 parcels (one for CVS and one for the relocated wireless facilities).	Development Services	
17.	A reciprocal access and parking agreement, in a form acceptable to the City Attorney, over and between the CVS property and the wireless communication facilities property for maintenance and/or other operational needs and allowing the CVS Pharmacy to construct and access 3 parking spaces on the property where the wireless facilities are contained shall be completed, executed and recorded.	Development Services	

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



	<u>Timing/ Implementation</u>	<u>Monitoring Department /Division</u>	<u>Verification (date and Signature)</u>
18.	A copy of these permit conditions of approval shall be kept on premises and made available upon request.	Development Services	
19.	The building construction plans shall reflect the architectural details described in the project design plans and shall be subject to review and approval of staff with concurrence of the Planning Commission Development Review Subcommittee; should discrepancies exist between the construction plans and the approved project design plans the matter shall be referred to the Planning Commission for approval.	Development Services	
20.	The applicant shall submit a final grading and drainage plan and storm water control plan to the satisfaction of the City Engineer as part of the building construction plans.	Development Services	
21.	The applicant shall submit a detailed landscaping plan for review and approval. The landscaping plan shall identify the plant types and sizes, irrigation details, as well as fencing details. Plant	Development Services and Fire	

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



	<u>Timing/ Implementation</u>	<u>Monitoring Department /Division</u>	<u>Verification (date and Signature)</u>
	Permit		
22.	selections shall be drought tolerant and suited to Pinole's climate.		
23.	All project conditions of approval as well as the timing of the conditions of approval shall be listed in the project construction plans to help ensure that conditions imposed by the City are completed at the appropriate time in the development process..	Development Services	
24.	The applicant shall submit precise color and material samples for review and approval. The color and material specifications shall be included on the building permit drawings.	Planning	
24.	The holder of the use permit shall prepare a security plan for review and approval by the Police Department to help prevent crime on-site during construction and during operations. The security plan shall include emergency contact information, construction staging area information, construction site addressing, and crime prevention measures.	Development Services and Police	

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



	<u>Timing/ Implementation</u>	<u>Monitoring Department /Division</u>	<u>Verification (date and Signature)</u>
25.	The applicant shall complete and place on file a Police Department Business Emergency Information Form.	Police	
26.	The applicant and property owner shall prepare a site development construction safety plan that shall be provided for review and approval describing the steps to be taken by building contractor(s) to maintain public safety during all phases of construction.	Development Services	
27.	All exterior materials and colors are to be consistent with approved project color / material boards. Once installed, all improvements are to be maintained in accordance with the approved plans. Any changes which materially affect the exterior character shall be resubmitted to the Development Services Department for review and approval. Minor changes may be approved by the Planning Manager. Any changes determined by the Development Services Department to be non-minor may be referred to the Planning Commission after conferring with the Chair of the Planning Commission.	Development Services	

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



		<u>Timing/ Implementation</u>	<u>Monitoring Department /Division</u>	<u>Verification (date and Signature)</u>
	<b>During Construction</b>			
28.	A copy of the site development construction safety plan, once approved, shall be kept at the project site and made available upon request.	During Construction	Development Services	
29.	The construction site shall be cleaned of garbage and debris on a daily basis and maintained in an orderly fashion. All construction equipment shall be secured at the end of each day of construction.	During Construction	Development Services	

**RESOLUTION 16-01 WIRELESS COMMUNICATION FACILITIES RELOCATION  
EXHIBIT A: CONDITIONS OF APPROVAL**



	<b>Prior to Final Inspection</b>			
30.	The applicant shall provide a cumulative RF report providing actual RF emission levels at maximum power levels to confirm compliance with FCC safety thresholds.	Prior to Final Inspection & Facility Power Up	Development Services	
31.	The City shall obtain a landscape maintenance bond from the property owner to ensure planting material is established and in good health for a period of at least three years. The maintenance bond funds shall be returned three years from the date of final occupancy.	Prior to Final Inspection & Facility Power Up	Development Services	
32.	The facility shall be reviewed for consistency with the approved building plans by the Planning Manager and affected City staff.	Prior to Final Inspection & Facility Power Up	Development Services	



# CELL TOWER SIGN

CANYON DRIVE & APPIAN WAY  
PINOLE, CA 94564



### CODE COMPLIANCE

ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL GOVERNING AUTHORITIES. NOTHING IN THESE PLANS IS TO BE CONSTRUCTED TO PERMIT WORK NOT CONFORMING TO THESE CODES.

1. CALIFORNIA CODE OF REGULATIONS
2. 2013 CALIFORNIA BUILDING CODE
3. 2013 CALIFORNIA MECHANICAL CODE
4. 2013 CALIFORNIA PLUMBING CODE
5. 2013 CALIFORNIA ELECTRICAL CODE
6. 2013 GREEN CODE
7. 2010 EDITION OF TITLE 24 ENERGY STANDARDS
8. ANY LOCAL BUILDING CODE AMENDMENTS TO THE ABOVE
9. CITY/COUNTY ORDINANCES

HANDICAP REQUIREMENTS:  
FACILITY IS UNMANNED AND NOT FOR HUMAN HABITATION. HANDICAPPED ACCESS NOT REQUIRED IN ACCORDANCE WITH CALIFORNIA ADMINISTRATIVE STATE CODE PART 2, TITLE 24, CHAPTER 118, SECTION 1102B.

### PROJECT DESCRIPTION

THIS PROJECT CONSISTS OF THE ADDITION OF PROPOSED 77'-0" TALL CELL TOWER SIGN WITH TELECOMMUNICATION ANTENNAE INSIDE TOWER AND THE ADDITION OF (2) TELECOMMUNICATIONS EQUIPMENT SHELTER UNITS NEAR BASE OF PROPOSED TOWER.

### DRIVING DIRECTIONS

FROM: 1855 GATEWAY BLVD, CONCORD, CA 94520

1. HEAD EAST ON EXPOSITION BLVD
2. TAKE A LEFT TURN RAMP TO SAN FRANCISCO
3. TAKE THE 180 W BUS
4. TAKE THE 180 W EXIT TOWARD HAYSHAN FRANCISCO
5. MERGE ONTO 180 BUS W
6. MERGE ONTO 180 W
7. TAKE THE APPIAN WAY EXIT TURN RIGHT ONTO APPIAN WAY
8. TAKE THE APPIAN WAY EXIT TURN RIGHT ONTO APPIAN WAY

TOTAL EST TIME: 1 HOURS 8 MINUTES    TOTAL EST DISTANCE: 70.9 MILES

### PROJECT INFORMATION

**SITE ADDRESS:**  
CANYON DRIVE & APPIAN WAY  
PINOLE, CA 94564

**APN:**  
401-273-043, 401-273-045, 401-273-046 & 401-273-044

**PROPERTY OWNER:**  
CVS PHARMACY

**JURISDICTION:**  
CITY OF PINOLE

**LATITUDE:**  
XXX

**LONGITUDE:**  
XXX

**TELEPHONE:**  
AT&T

**POWER:**  
PG&E

**EMERGENCY CONTACT:** 1-888-682-4882

### VICINITY MAP



### GENERAL CONTRACTOR NOTES

DO NOT SCALE DRAWING:  
CONTRACTOR SHALL VERIFY ALL PLANS AND EXISTING DIMENSIONS AND CONDITIONS ON THE JOB SITE AND SHALL IMMEDIATELY NOTIFY THE ARCHITECT IN WRITING OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK OR BE RESPONSIBLE FOR SAME.

### SHEET INDEX

SHEET	DESCRIPTION
T-1	TITLE SHEET, SITE INFORMATION AND VICINITY MAP
A-1	SITE PLAN
A-1.1	CELL TOWER PLAN & EQUIPMENT SHELTER PLANS AND ELEVATIONS
A-2	PROPOSED CELL TOWER PLANS AND ELEVATIONS
A-2.1	PROPOSED CELL TOWER COLOR SCHEME
A-3	DETAILS

### APPROVALS

LANDLORD: \_\_\_\_\_

CONSTRUCTION MANAGER: \_\_\_\_\_

RF ENGINEER: \_\_\_\_\_

SITE ACQUISITION MANAGER: \_\_\_\_\_

ZONING MANAGER: \_\_\_\_\_

UTILITY COORDINATOR: \_\_\_\_\_

NETWORK OPERATIONS MANAGER: \_\_\_\_\_

PROGRAM REGIONAL MANAGER: \_\_\_\_\_

**DEVELOPER:**  
ARMSTRONG DEVELOPMENT PROPERTIES, INC.  
1175 EXPOSITION BLVD., SUITE 101  
SACRAMENTO, CA 95815  
TEL: (916) 643-8610  
FAX: (916) 643-8611

**CELL TOWER SIGN**  
CANYON DRIVE & APPIAN WAY  
PINOLE, CA 94564

CURRENT ISSUE DATE: 01/15/2016

ISSUED FOR: ZONING

REV. DATE: \_\_\_\_\_ DESCRIPTION: \_\_\_\_\_ BY: \_\_\_\_\_

REV.	DATE	DESCRIPTION	BY
06/29/2014	0608 20		NS
07/17/2015	9008 20		NS
07/16/2015	9008 20		NS
06/07/2015	1008 20		NS
06/18/2015	1008 20 CLEAR REV		NS
06/21/2015	1008 20		NS
12/06/2015	1008 20		NS
01/15/2016	1008 20		NS

PROJECT ARCHITECT/ENGINEER: \_\_\_\_\_



CONSULTANT: \_\_\_\_\_

DRAWN BY: \_\_\_\_\_ CHK: \_\_\_\_\_ APV: \_\_\_\_\_

NS NS DE

LICENSER: \_\_\_\_\_

SHEET TITLE: \_\_\_\_\_

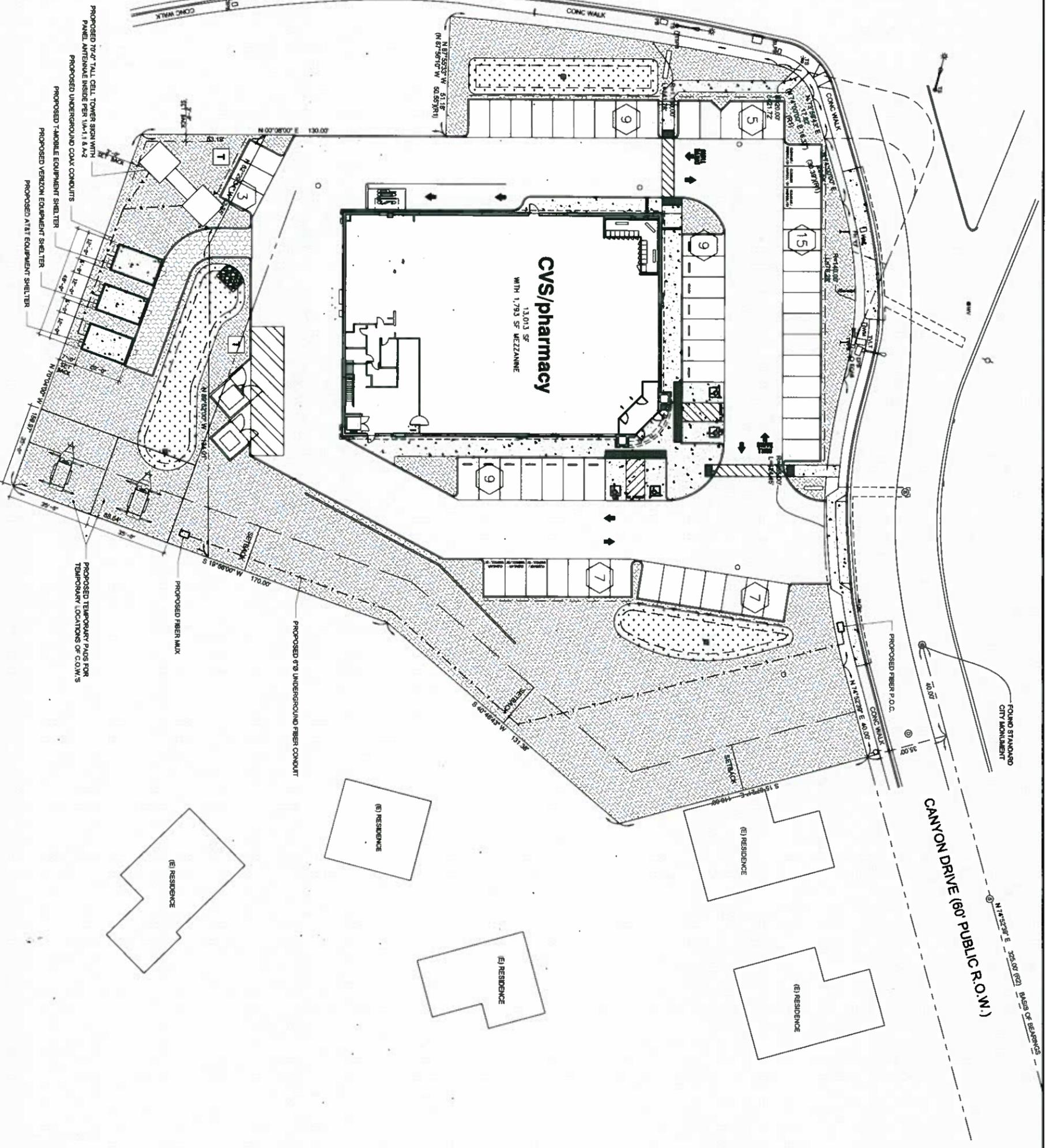
TITLE SHEET

SHEET NUMBER: \_\_\_\_\_

T-1

SITE PLAN

APPIAN WAY (PUBLIC R.O.W. WIDTH VARIES)



PROPOSED 7'x4' TALL CELL TOWER SIGN WITH PANEL ANTENNAE INSIDE PER 14-1.1 & 4.2  
 PROPOSED UNDERGROUND COAX CONDUITS  
 PROPOSED T-MOBILE EQUIPMENT SHELTER  
 PROPOSED VERIZON EQUIPMENT SHELTER  
 PROPOSED AT&T EQUIPMENT SHELTER

PROPOSED TEMPORARY PLAYS FOR TEMPORARY LOCATIONS OF C.O.W.'S

PROPOSED FIBER WALK

PROPOSED 6" UNDERGROUND FIBER CONDUIT

(E) RESIDENCE

(E) RESIDENCE

(E) RESIDENCE

(E) RESIDENCE

CANYON DRIVE (90' PUBLIC R.O.W.)

ROUNDSTAND CITY MONUMENT



**DEVELOPER:**  
**ARMSTRONG DEVELOPMENT**  
 ARMSTRONG DEVELOPMENT PROPERTIES, INC.  
 17000 BAYVIEW BLVD. SUITE 101  
 SCARSDALE, CA 94575  
 TEL: (916) 543-9810  
 FAX: (916) 543-9813

**PROJECT INFORMATION:**  
**CELL TOWER SIGN**  
 CANYON DRIVE & APPIAN WAY  
 PINOLE, CA 94564

**CURRENT ISSUE DATE:**  
 01/15/2016

**ISSUED FOR:**  
 ZONING

**REV. DATE DESCRIPTION BY:**

06/25/2014	0608 ZD	MS
02/11/2015	0608 ZD	MS
02/18/2015	0608 ZD	MS
06/07/2015	1000K ZD	MS
06/18/2015	1000K ZD CASHOUT REV.	MS
06/21/2015	1000K ZD	MS
12/06/2015	1000K ZD	MS
01/15/2016	1000K ZD	MS

**PROJECT ARCHITECT/ENGINEER:**



**CONSULTANT:**

**DRAWN BY:** NS **CHK.:** NS **APV.:** DE

**LICENSER:**

**SHEET TITLE:**

**SITE PLAN**

**SHEET NUMBER:**

**A-1**

**DEVELOPER**  
**ARMSTRONG DEVELOPMENT**  
 ARMSTRONG DEVELOPMENT SERVICES, INC.  
 1700 BROADWAY  
 SACRAMENTO, CA 95811  
 TEL: (916) 643-8810  
 FAX: (916) 643-8813

**PROJECT INFORMATION:**  
**CELL TOWER SIGN**  
 CANYON DRIVE & APPIAN WAY  
 PINOLE, CA 94564

**CURRENT ISSUE DATE:**  
 01/15/2016

**ISSUED FOR:**  
 ZONING

**REV. DATE DESCRIPTION BY:**

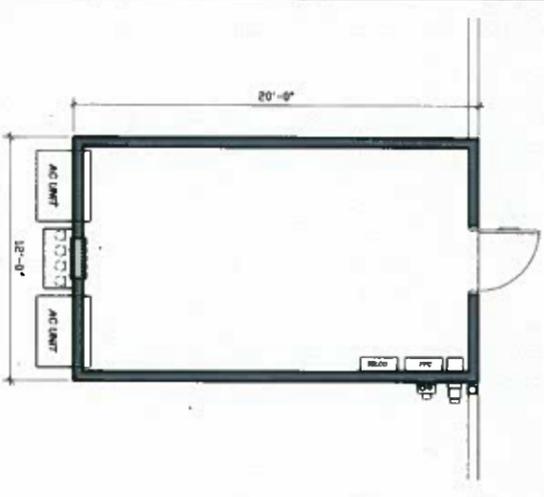
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02/11/2015	006 ZD	NS
02/18/2015	008 ZD	NS
05/07/2015	100K ZD	NS
06/18/2015	100K ZD CLIENT REV.	NS
06/31/2015	100K ZD	NS
12/06/2015	100K ZD	NS
01/15/2016	100K ZD	NS

**PROJECT ARCHITECT/ENGINEER:**  
**ZON ARCHITECTS**  
 600 4TH STREET #253  
 SAN FRANCISCO, CA 94107  
 PHONE: (415) 742-9774  
 FAX: (415) 384-5302

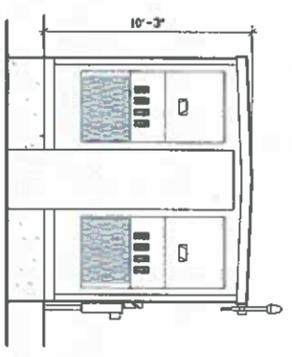
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**DRAWN BY:** NS **CHK.:** NS **APV.:** DE  
**LICENSER:**

**SHEET TITLE:**  
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**SHEET NUMBER:**

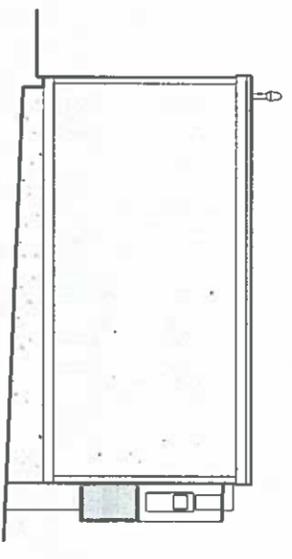
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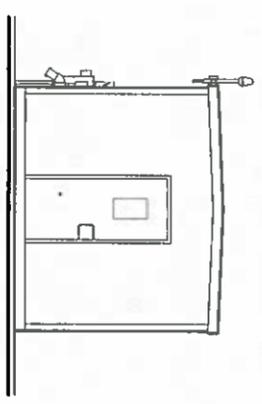
**NOTE:**  
 PAINT AND TEXTURE WALLS TO MATCH BUILDING



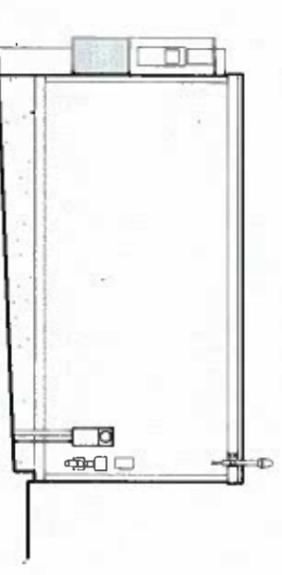
**SOUTH ELEVATION**



**WEST ELEVATION**



**NORTH ELEVATION**



**EAST ELEVATION**

**TYPICAL PROPOSED EQUIPMENT SHELTER UNIT**

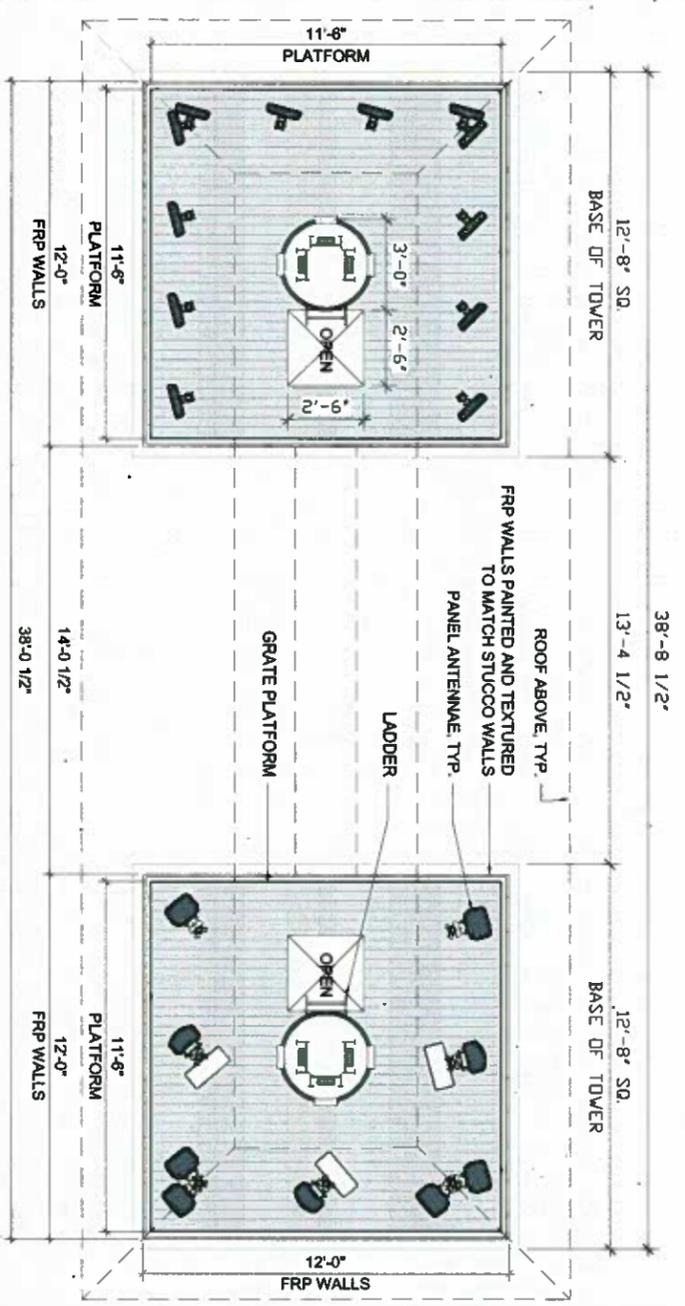
SCALE 1/4" = 1'-0"

2

**PROPOSED CVS TOWER PLAN AT 55'-0" (OPTIONS 1 & 2)**

SCALE 3/8" = 1'-0"

1





**DEVELOPER:**  
**ARMSTRONG DEVELOPMENT SERVICES, INC.**  
 15000 BAYVIEW AVENUE, SUITE 101  
 SACRAMENTO, CA 95825  
 TEL: (916) 643-9810  
 FAX: (916) 643-9813

**PROJECT INFORMATION:**  
**CELL TOWER SIGN**  
 CANYON DRIVE & APRIL WAY  
 PINOLE, CA 94664

**CURRENT ISSUE DATE:**  
 01/15/2016

**ISSUED FOR:**  
 ZONING

**REV. DATE DESCRIPTION BY:**

06/25/2011	005 20	MS
02/11/2015	006 20	MS
02/18/2015	008 20	MS
06/07/2015	1005 20	MS
06/18/2015	1006 20	MS
06/21/2015	1008 20	MS
12/06/2015	1009 20	MS
01/15/2016	1009 20	MS

**PROJECT ARCHITECT/ENGINEER:**  
  
 640 4TH STREET, 2ND FLOOR  
 SAN FRANCISCO, CA 94107  
 PHONE: (415) 7469774  
 FAX: (415) 3545582

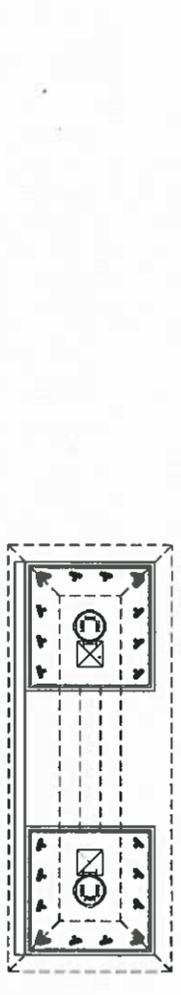
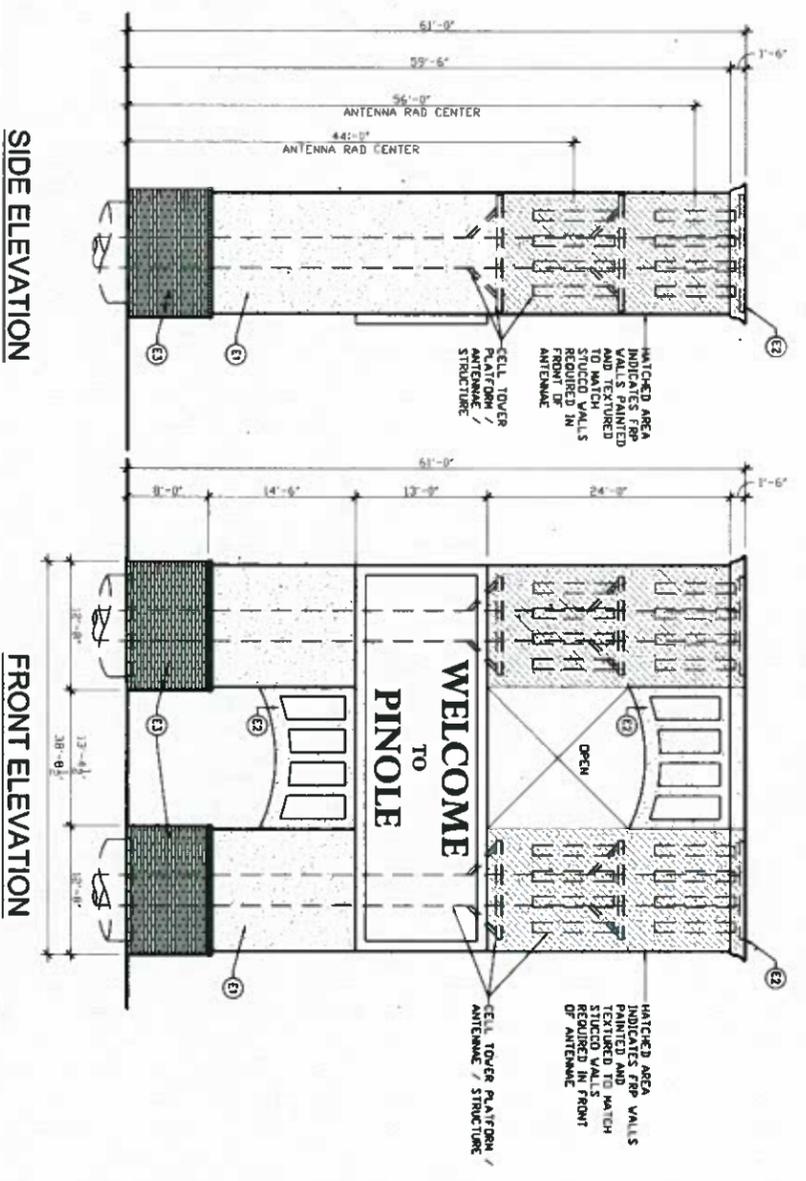
**CONSULTANT:**  
 DRAWN BY: NS  
 CHECKED BY: NS  
 APV. BY: DE  
 LICENSE NUMBER: \_\_\_\_\_

**SHEET TITLE:**  
**PROPOSED CELL TOWER PLANS AND ELEVATIONS**  
**SHEET NUMBER:**  
**A-2**

**EXTERIOR FINISH SCHEDULE**

TAG	MATERIAL / DESCRIPTION	QTY	UNIT	FINISH / EX. NO.	QTY	UNIT	NOTES
①	CY-STRUCTURED	510	YDS3	191 STOKLIT LOTUSMAN 1.5	MAO-00-048	PALE YELLOW	RE. SPECIFICATION
②	EIFS	510	YDS3	191 STOKLIT LOTUSMAN 1.5	MAO-00-047	TERRA COTTA	RE. SPECIFICATION
③	BRICKWORK BLOCK			4"XRTIC	EX-00-017	RENTON GLENN GARDEN	RE. SPECIFICATION
④	CONCRETE ROOFING TILE			CHARSTRONG	EX-00-014	TERRA COTTA	RE. SPECIFICATION
					EX-00-015	SMANTA BARBARA	RE. SPECIFICATION
						BLEND	

**LEGEND**  
 ② - NO. EXTERIOR FINISH SCHEDULE



**PROPOSED CELL TOWER PLAN & ELEVATIONS (OPTION 2)**

**PROPOSED CELL TOWER PLAN & ELEVATIONS (OPTION 1)**

**SCALE**  
 1/8" = 1'-0"  
 0 2 4 8 16'



ARMSTRONG DEVELOPMENT PROPERTIES, INC.  
 1500 W. 15th Street, Suite 101  
 Sacramento, CA 95815  
 Tel: (916) 643-9610  
 Fax: (916) 643-9815

PROJECT INFORMATION:

**CELL TOWER SIGN**  
 CANYON DRIVE & APRIL WAY  
 PINOLE, CA 94664

CURRENT ISSUE DATE:

01/15/2016

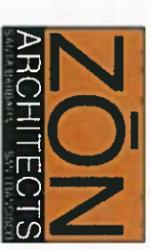
ISSUED FOR:

ZONING

REV. DATE: DESCRIPTION: BY:

REV.	DATE	DESCRIPTION	BY
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02/18/2015	0006 Z0		MS
05/07/2015	1000 Z0		MS
06/18/2015	1000 Z0	CLDRP REV	MS
06/21/2015	1000 Z0		MS
12/06/2015	1000 Z0		MS
01/15/2016	1000 Z0		MS

PROJECT ARCHITECT/ENGINEER:



5400 4th STREET #255  
 SAN FRANCISCO, CA 94117  
 PHONE: (415) 463-7174  
 FAX: (415) 354-5892

CONSULTANT:

DRAWN BY: CHK: APV:

NS NS DC

LICENSER:

SHEET TITLE:

**PROPOSED CELL TOWER COLOR SCHEME**

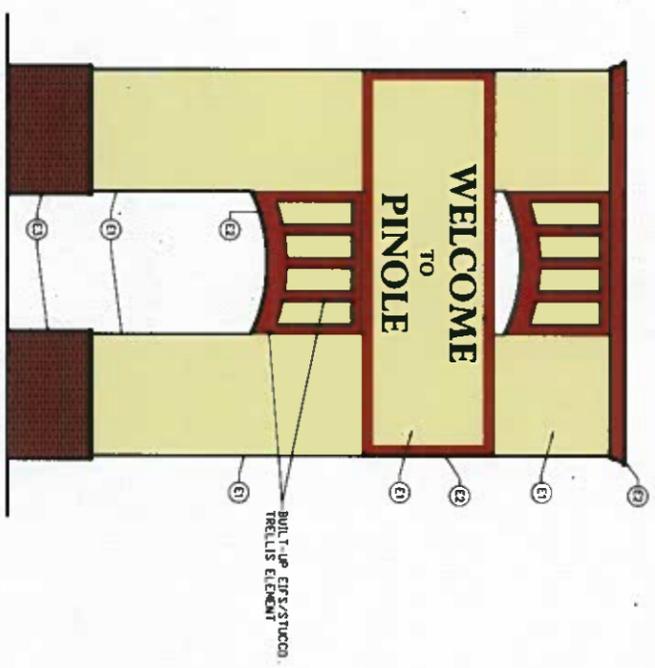
SHEET NUMBER:

**A-2.1**

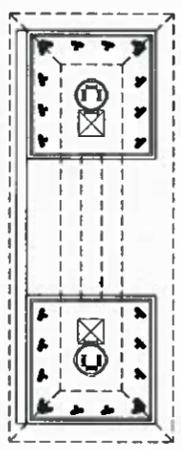
NO.	MATERIAL / DESCRIPTION	QTY.	STYLE / CAT. NO.	COLOR	NOTES
01	EIFFELIZED	510 THERM LOTUSAN	191 STOLIT LOTUSAN 1.5	PALE YELLOW	RE. SPECIFICATION
02	EFS	510 THERM LOTUSAN	191 STOLIT LOTUSAN 1.5	TERNA COTTA	RE. SPECIFICATION
03	BRUSHED ALUM.		474*706*	TERNA COTTA	RE. SPECIFICATION
04	CONCRETE ROOFING TILE	CLADE ROOFING CI	CAPIS IRONRO	SANTA BARBARA BLEND	RE. SPECIFICATION

LEGEND  
 02 - RE. EXTERIOR FINISH SCHEDULE

EXTERIOR FINISH SCHEDULE



FRONT ELEVATION

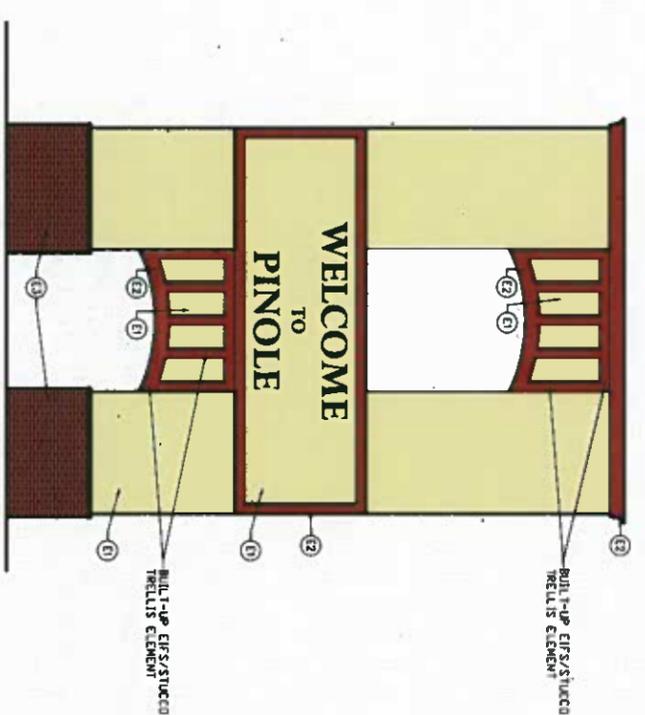


PLAN AT 35'-0"

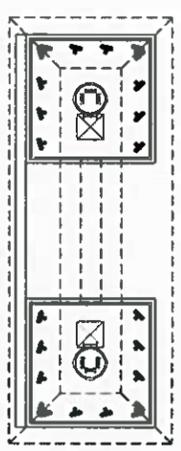
PROPOSED CELL TOWER PLAN & ELEVATION (OPTION 2)



2



FRONT ELEVATION



PLAN AT 35'-0"

PROPOSED CELL TOWER PLAN & ELEVATION (OPTION 1)



1

**DEVELOPER**  
**ARMSTRONG DEVELOPMENT**  
 ARMSTRONG DEVELOPMENT PROJECTS, INC.  
 1700 BROADWAY  
 SACRAMENTO, CA 95815  
 TEL: (916) 643-8810  
 FAX: (916) 643-8813

PROJECT INFORMATION:

**CELL TOWER SIGN**  
 CANYON DRIVE & APPIAN WAY  
 PINOLE, CA 94564

CURRENT ISSUE DATE:

01/15/2016

ISSUED FOR:

ZONING

REV.	DATE	DESCRIPTION	BY:
06/24/2014	008 2D		HS
02/11/2015	008 2D		HS
02/18/2015	008 2D		HS
05/07/2015	1008 2D		HS
06/18/2015	1008 2D	CLARIFY REV.	HS
08/31/2015	1008 2D		HS
12/06/2015	1008 2D		HS
01/15/2016	1008 2D		HS

PROJECT ARCHITECT/ENGINEER:



680 4TH STREET #255  
 SAN FRANCISCO, CA 94 07  
 PHONE: (415) 4699774  
 FAX: (415) 3845892

CONSULTANT:

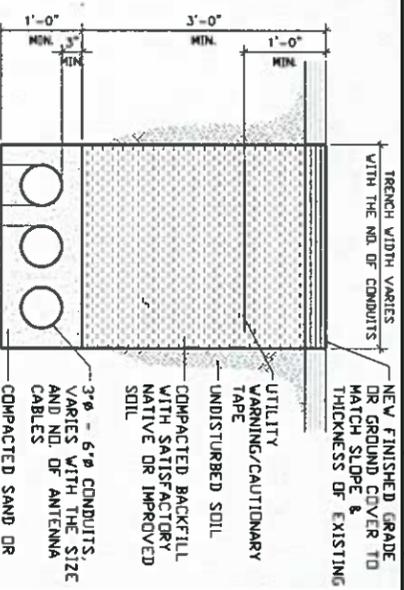
DRAWN BY: \_\_\_\_\_ CHK.: \_\_\_\_\_ APV.: \_\_\_\_\_  
 NS NS DE  
 LICENSE: \_\_\_\_\_

SHEET TITLE: \_\_\_\_\_

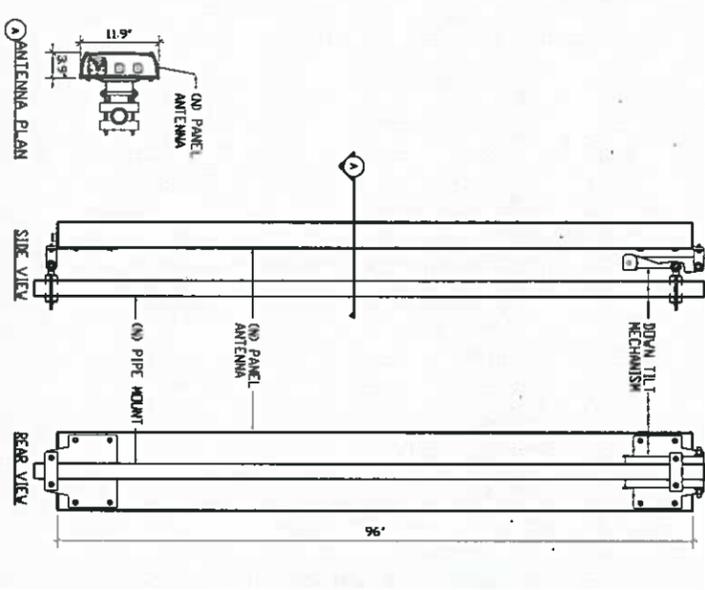
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**A-3**

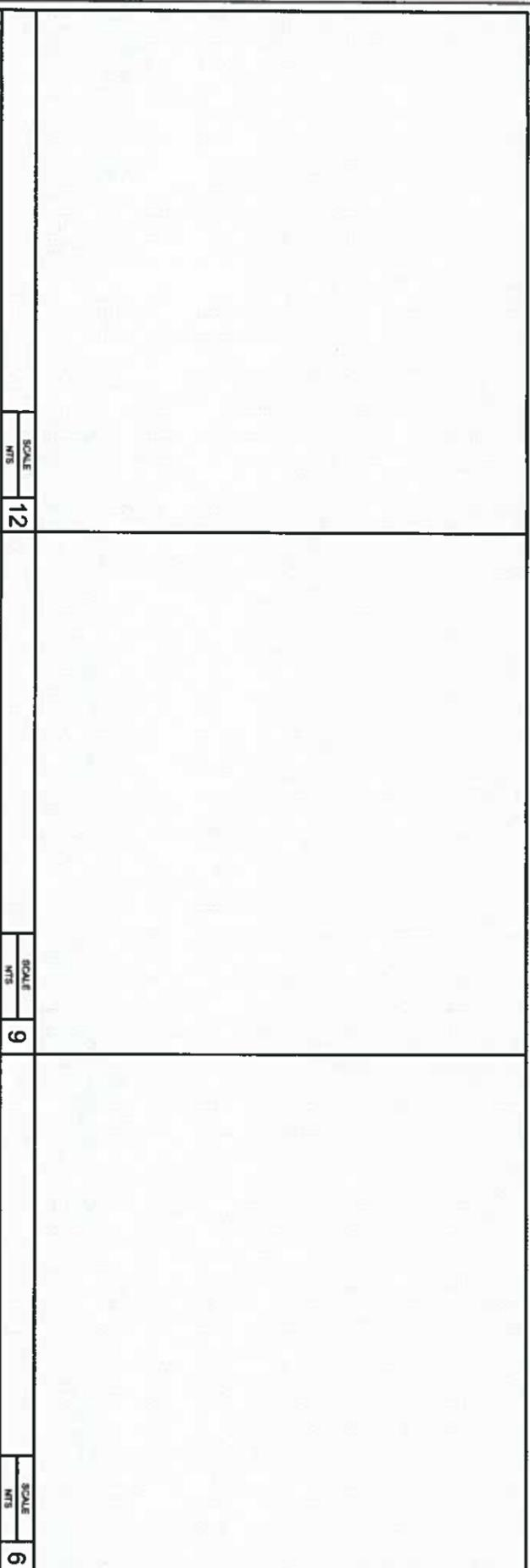
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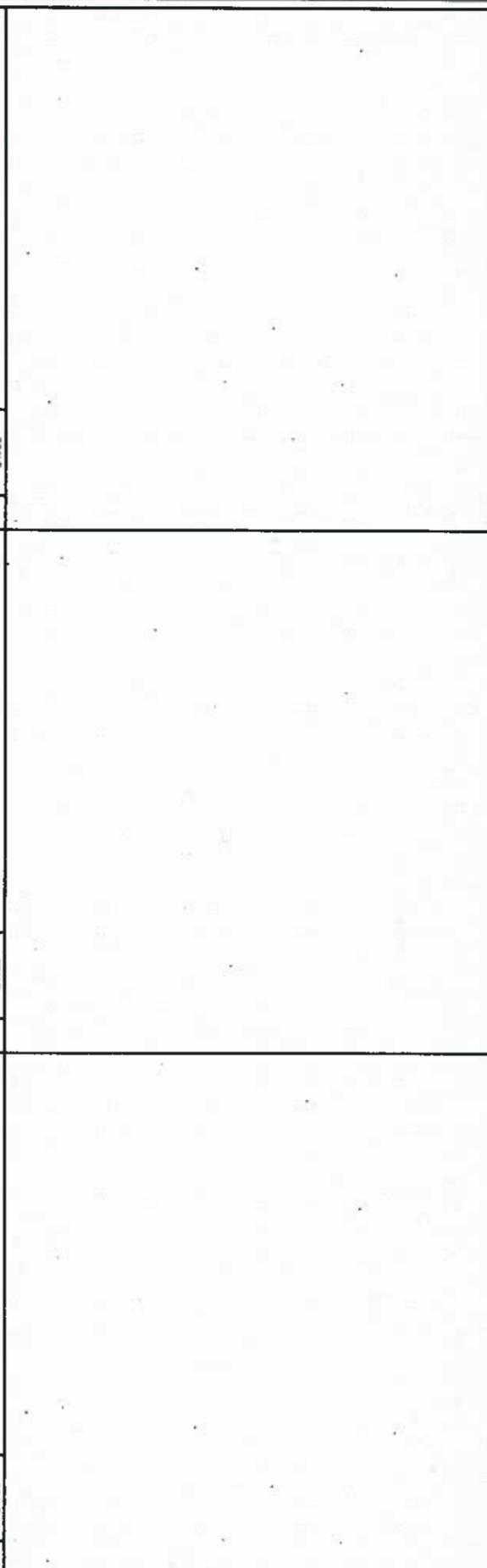
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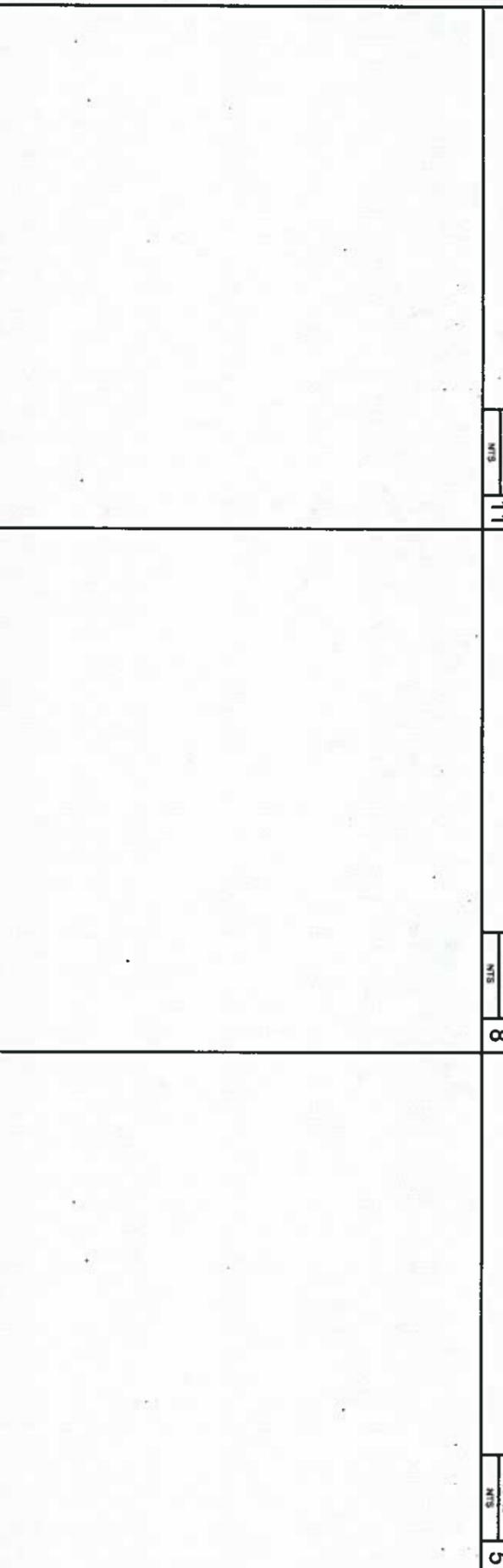
SCALE: 1/8" = 1'-0"



SCALE: 1/8" = 1'-0"



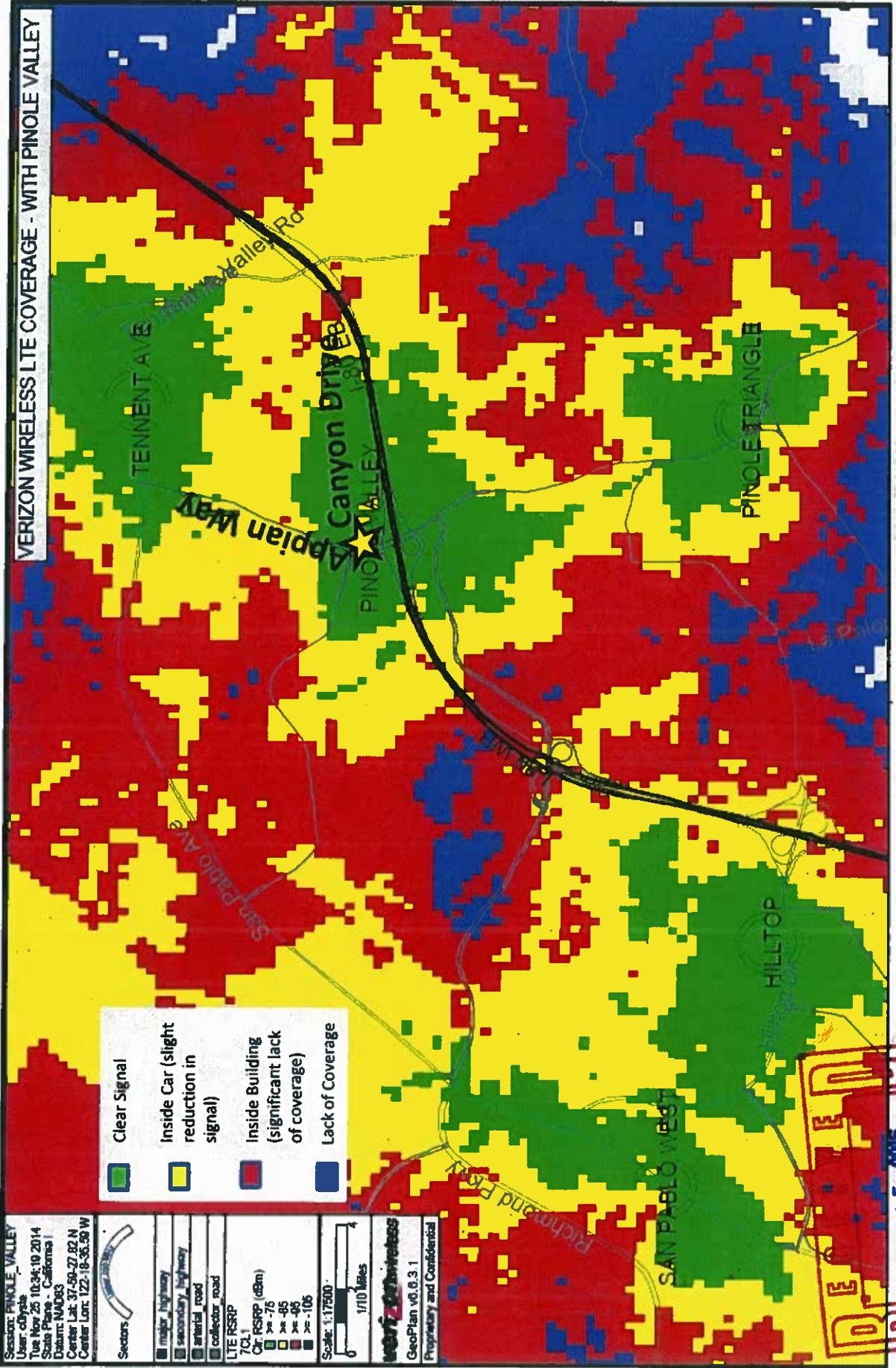
SCALE: 1/8" = 1'-0"



SCALE: 1/8" = 1'-0"

CURRENT SERVICE

VERIZON



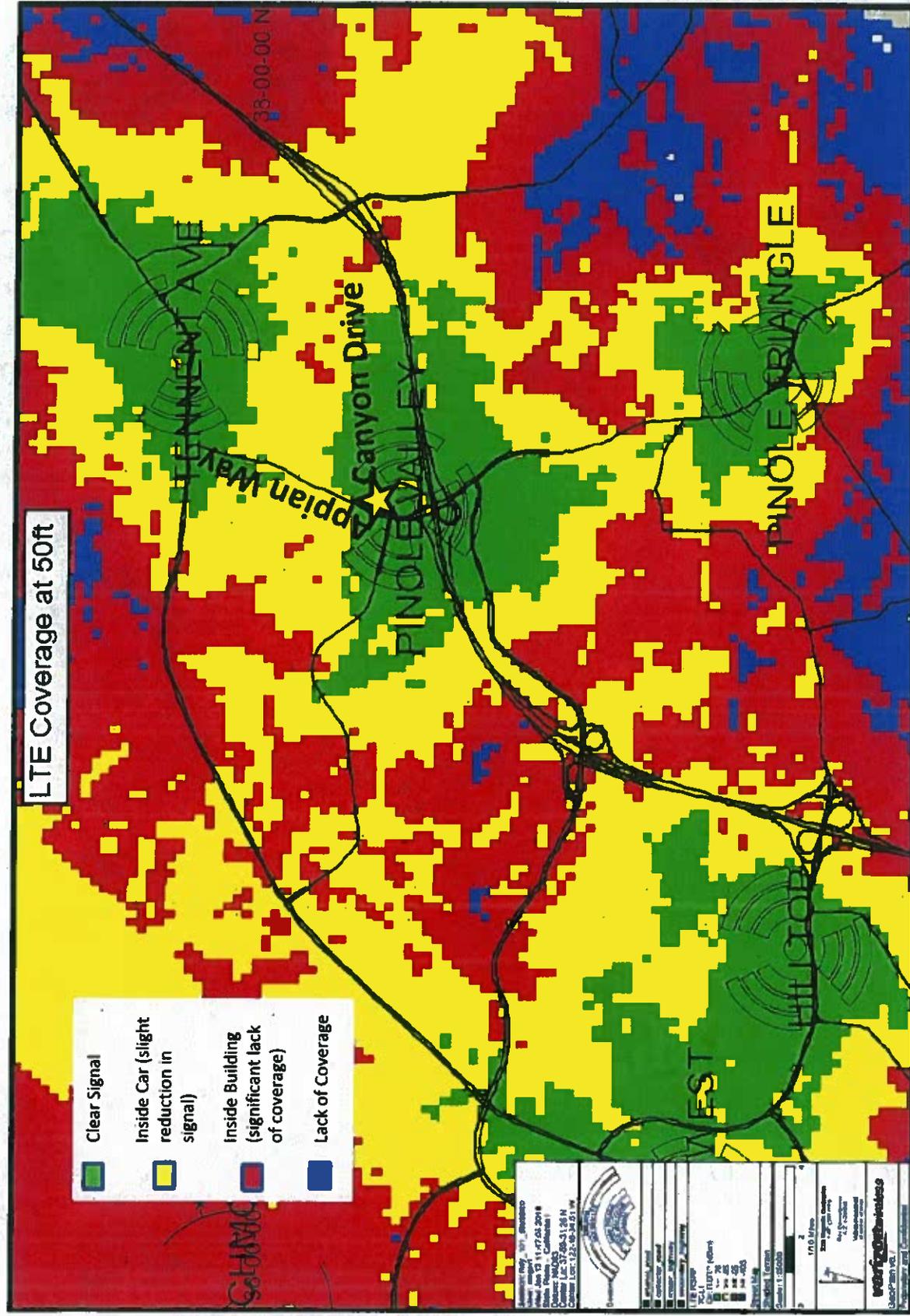
**DATE**

**JAN 15 2016**

**CITY OF PINOLE  
DEV. SERV.**

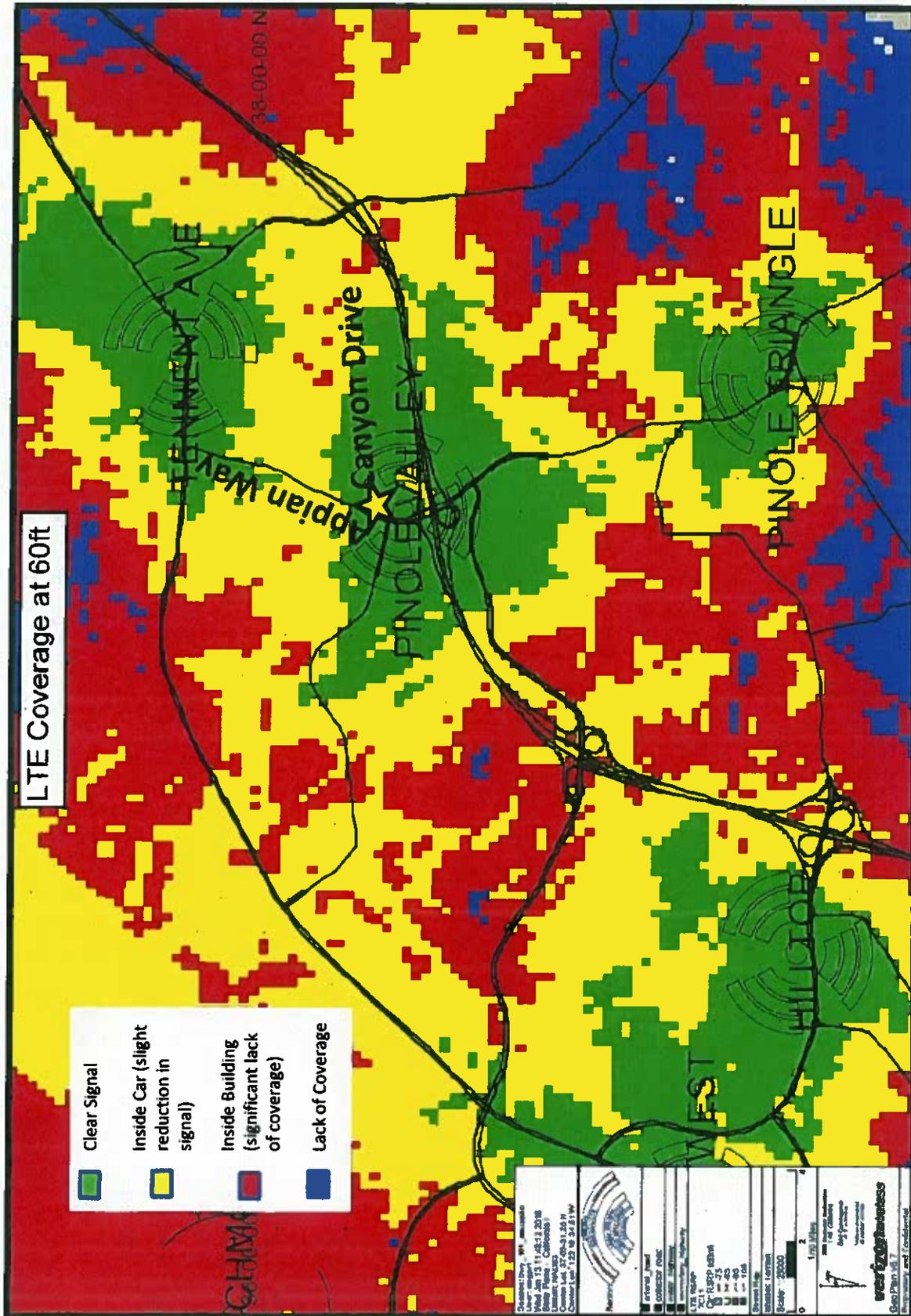
# VERIZON

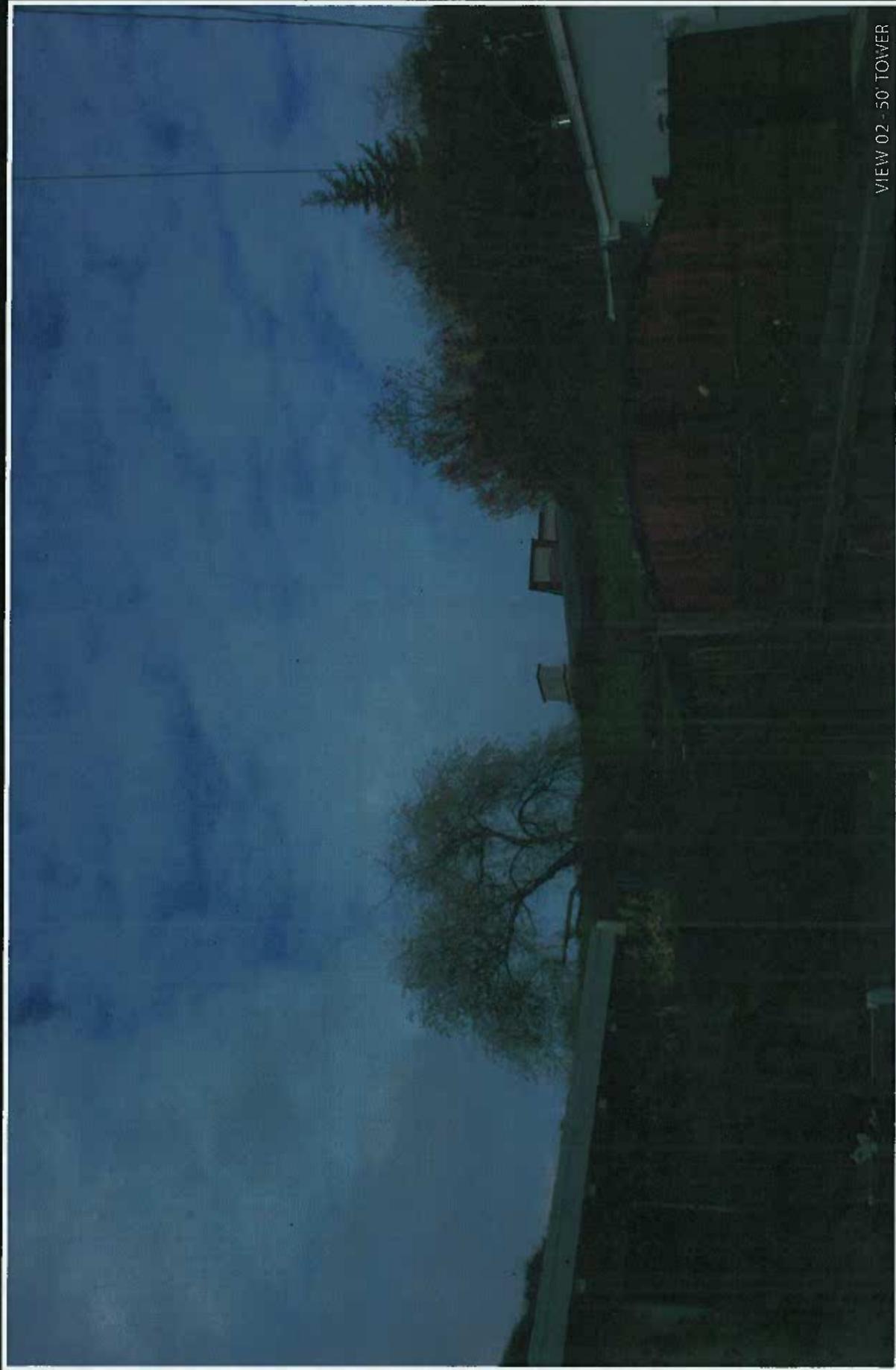
## Cellular Coverage – 50' Tower



# VERIZON

## Cellular Coverage – 60' Tower





VIEW 02 - 50' TOWER

**CVS/pharmacy**

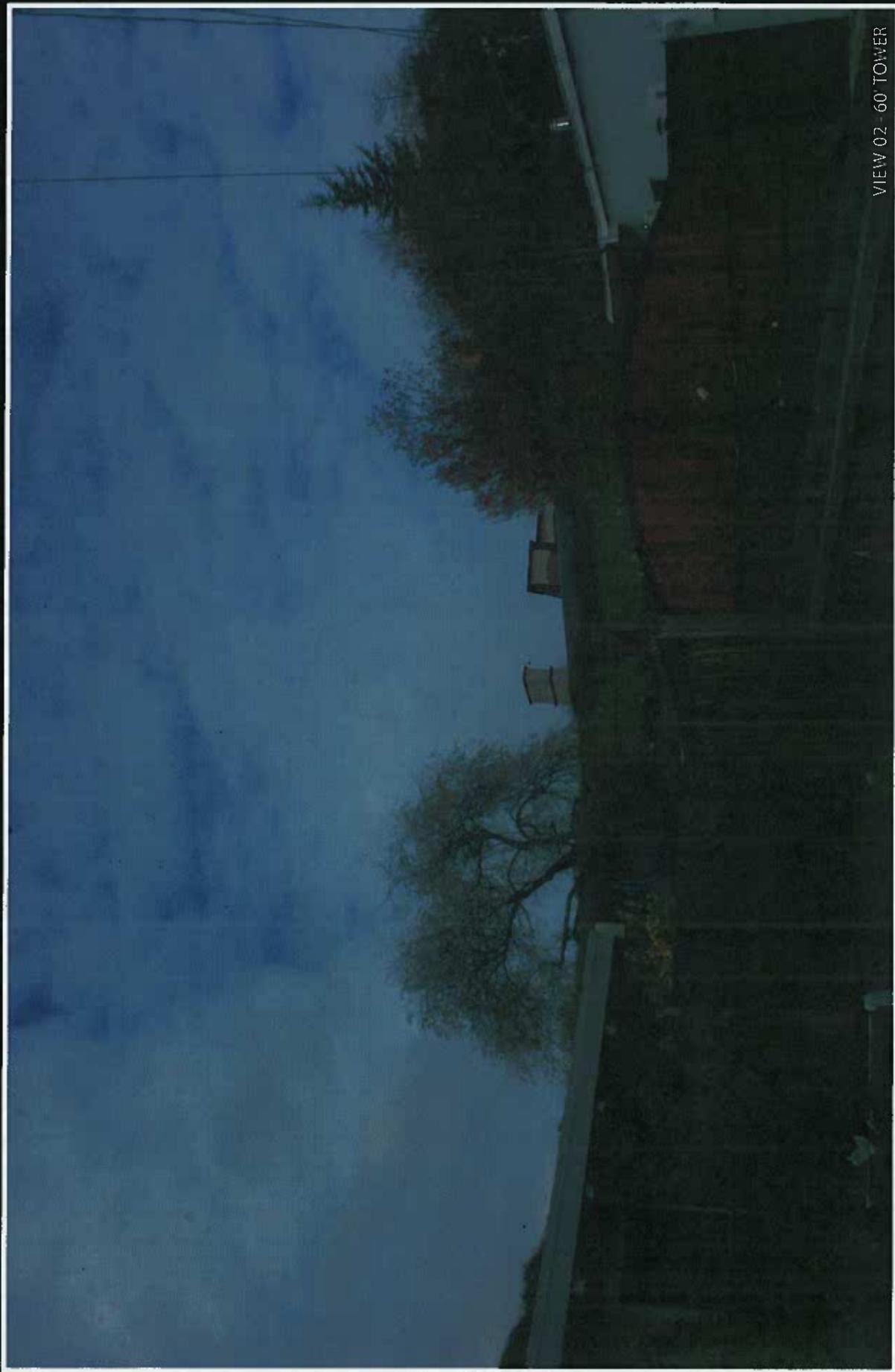
CVS #09299  
Canyon Drive & Appian Way  
Pinole, CA



2-00 Del Paso Road, Suite 1-0  
Sacramento, CA 95834  
916.673.9610

**JACOBS**

01-14-2016



VIEW 02 - 60' TOWER

**CVS/pharmacy**

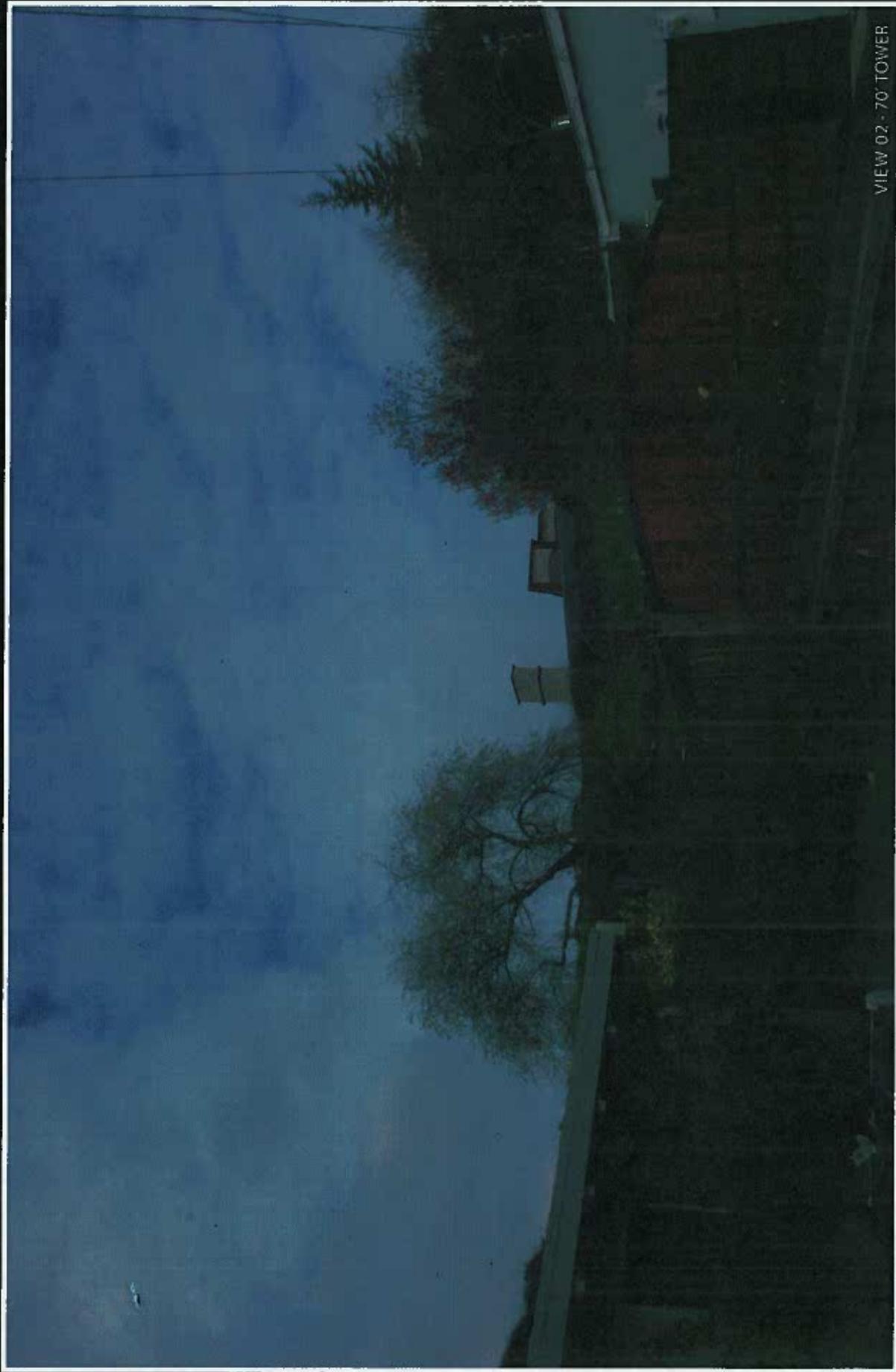
CVS #09299  
Canyon Drive & Appian Way  
Pinole, CA



2400 Del Paso Road, Suite 110  
Sacramento, CA 95834  
916.643.9610

**JACOBS**

01-14-2016



VIEW 02 - 70' TOWER

**CVS/pharmacy**

CVS #09299  
Canyon Drive & Appian Way  
Pinole, CA



2400 Del Paso Road, Suite 140  
Sacramento, CA 95833  
916.643.9610

**JACOBS**

01-14-2016



VIEW 01 - 50' TOWER

**CVS/pharmacy**

CVS #09299  
Canyon Drive & Appian Way  
Pinole, CA



2:00 Del Paso Road, Suite 1:0  
Sacramento, CA 95834  
916.643.9410

**JACOBS**

01-14-2016



VIEW 01 - 60' TOWER

**CVS/pharmacy**

CVS #09299  
Canyon Drive & Appian Way  
Pinole, CA



2:00 Del Paso Road, Suite 1:0  
Sacramento, CA 95833  
916.643.9610

**JACOBS**

01-14-2016



VIEW 01 - 70' TOWER

**CVS/pharmacy**

CVS #09299  
Canyon Drive & Appian Way  
Pinole, CA

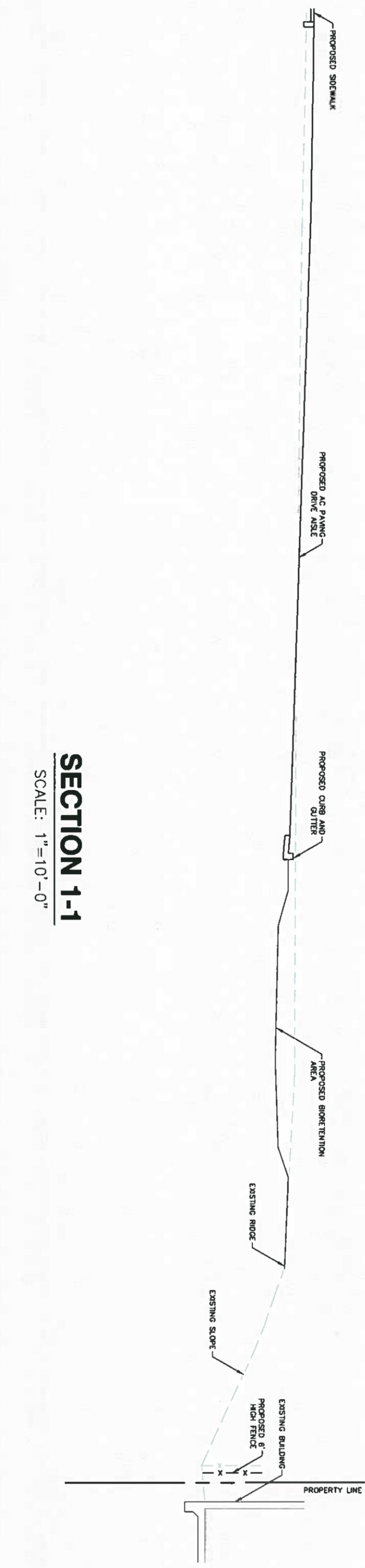


2400 Del Paso Road, Suite 140  
Sacramento, CA 95834  
916.643.9610

**JACOBS**

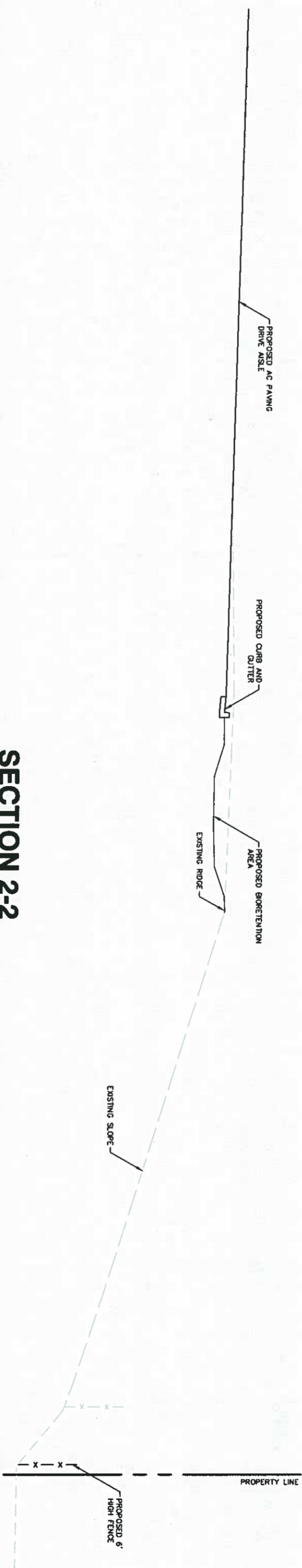
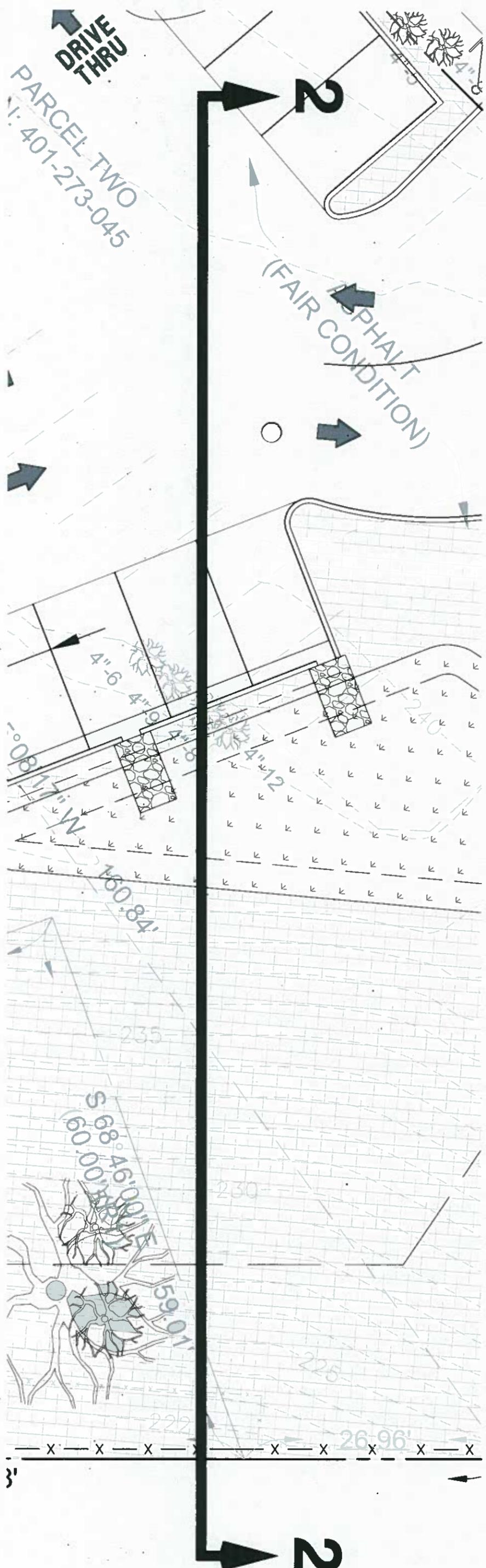
01-14-2016



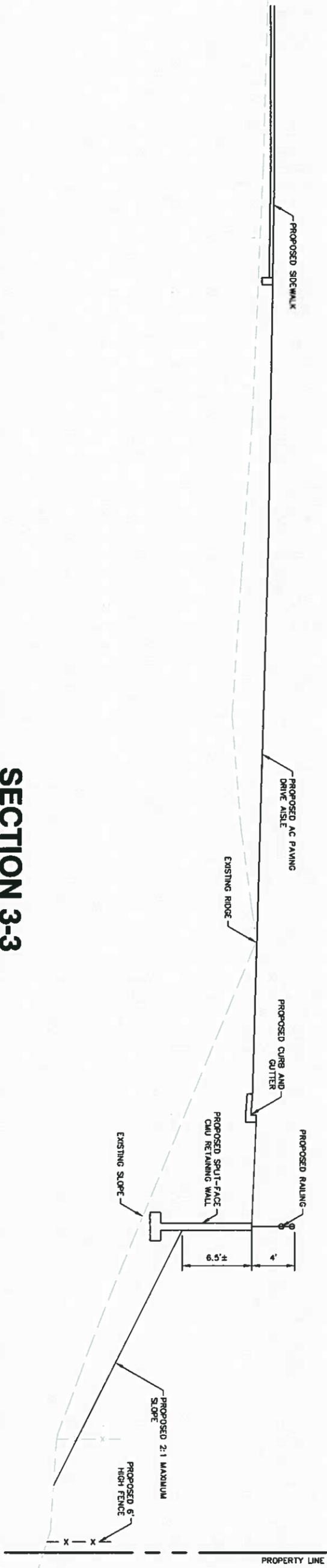
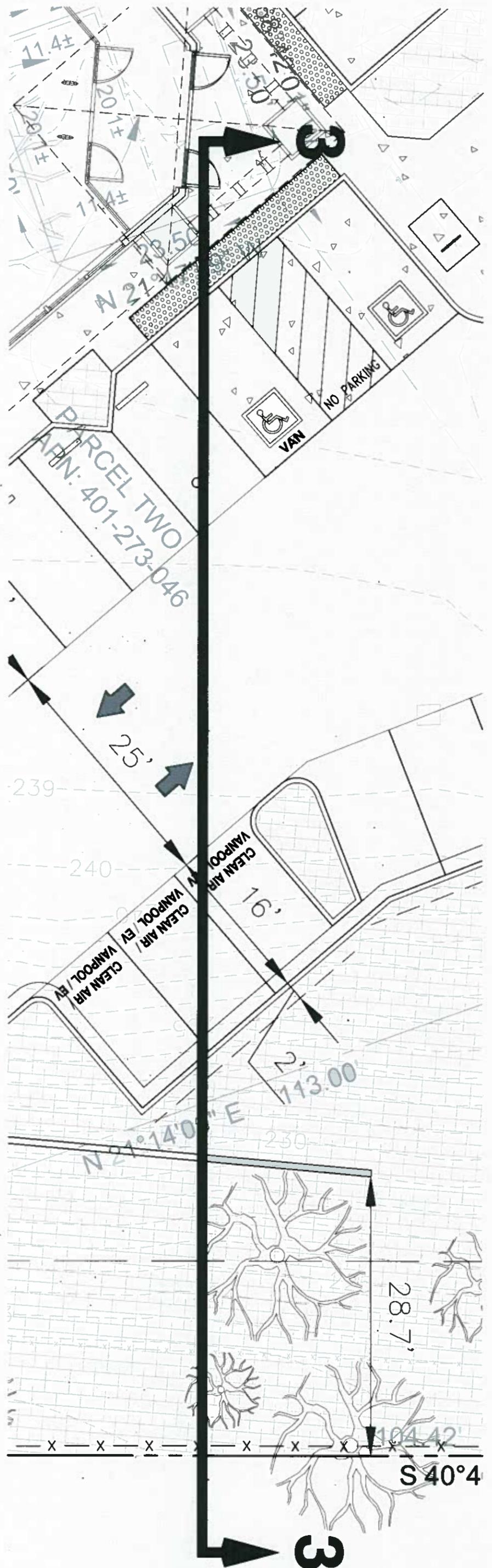


**SECTION 1-1**

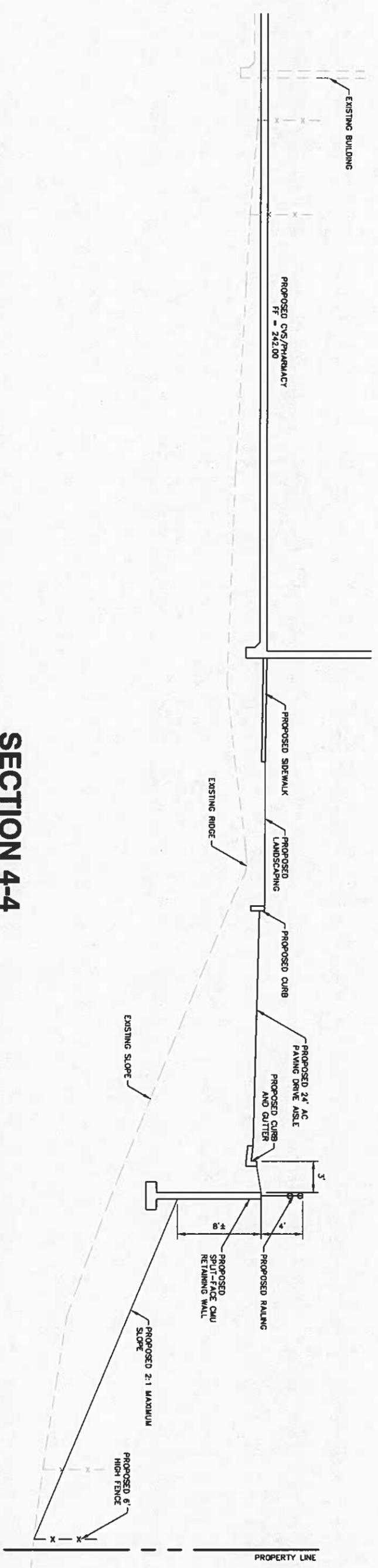
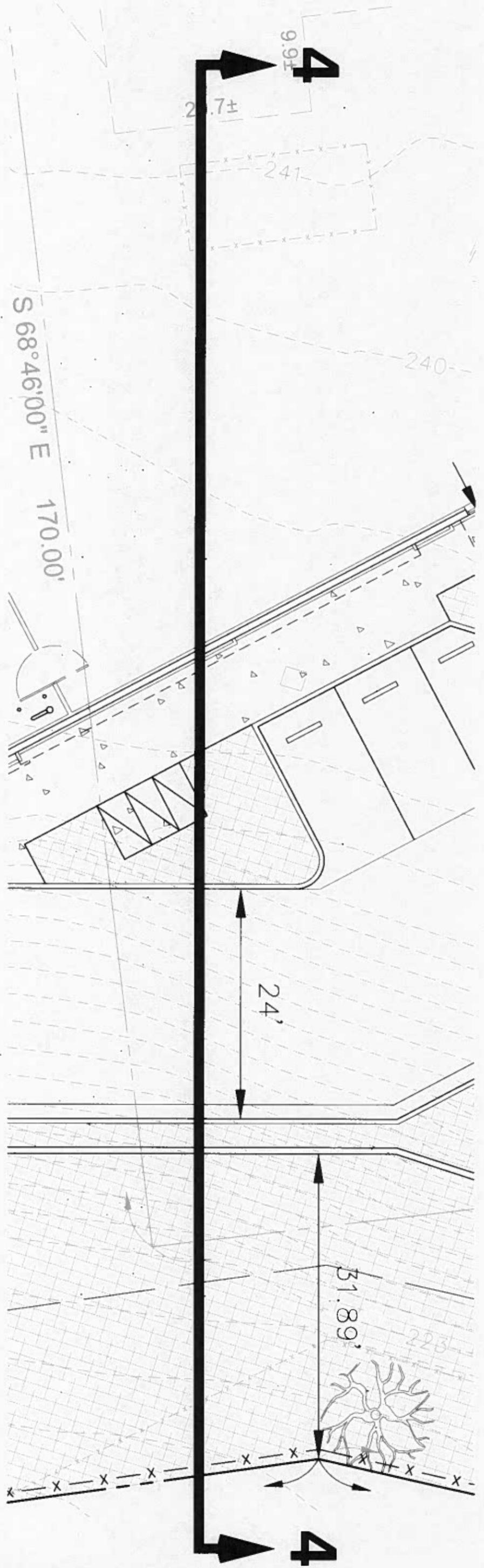
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**SECTION 2-2**  
 SCALE: 1" = 10'-0"

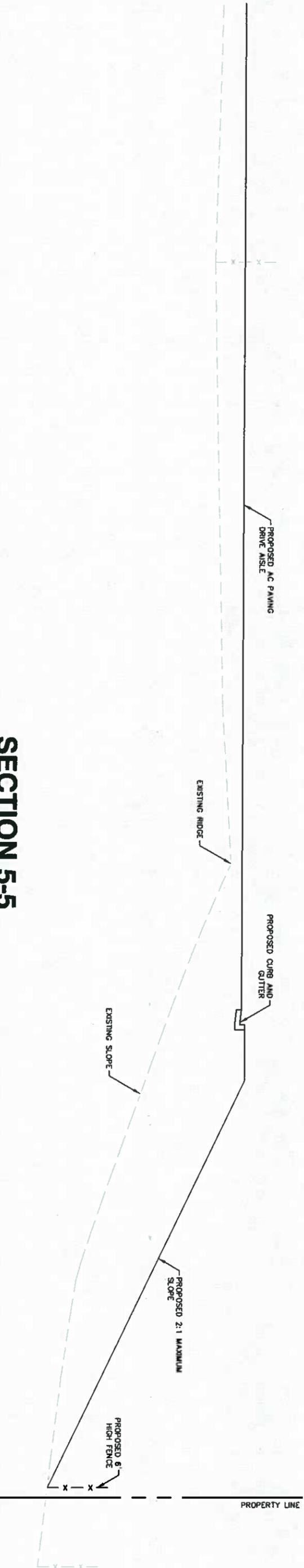
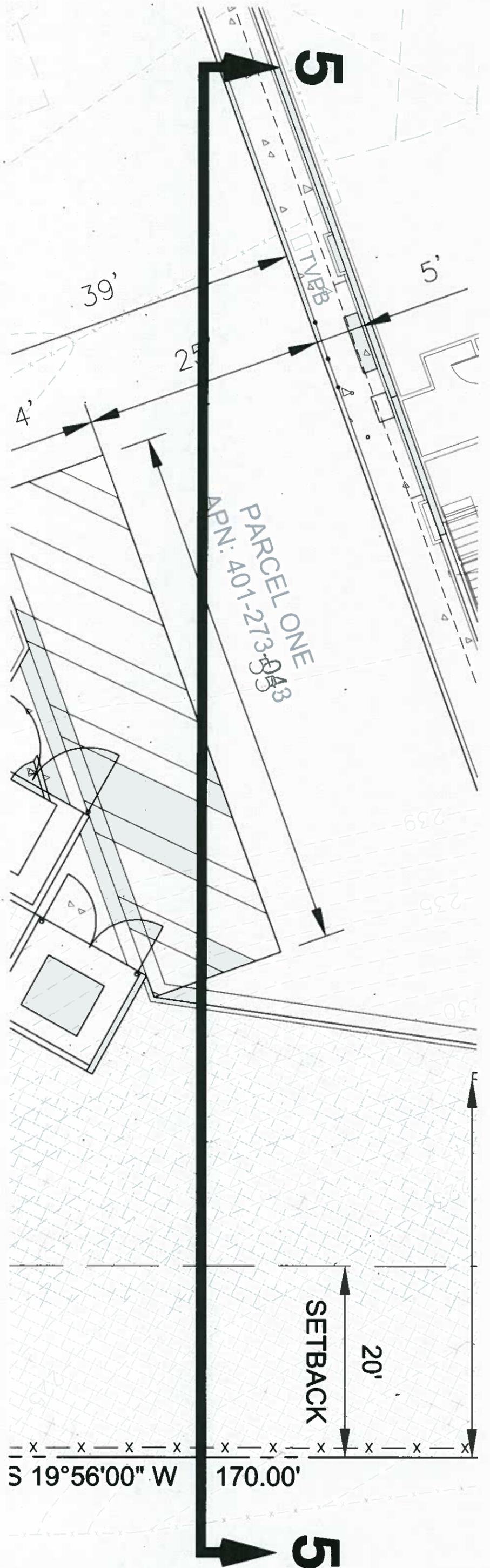


**SECTION 3-3**  
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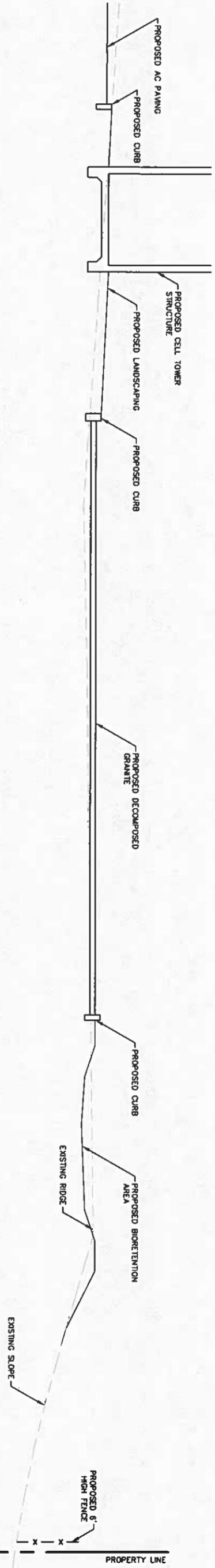
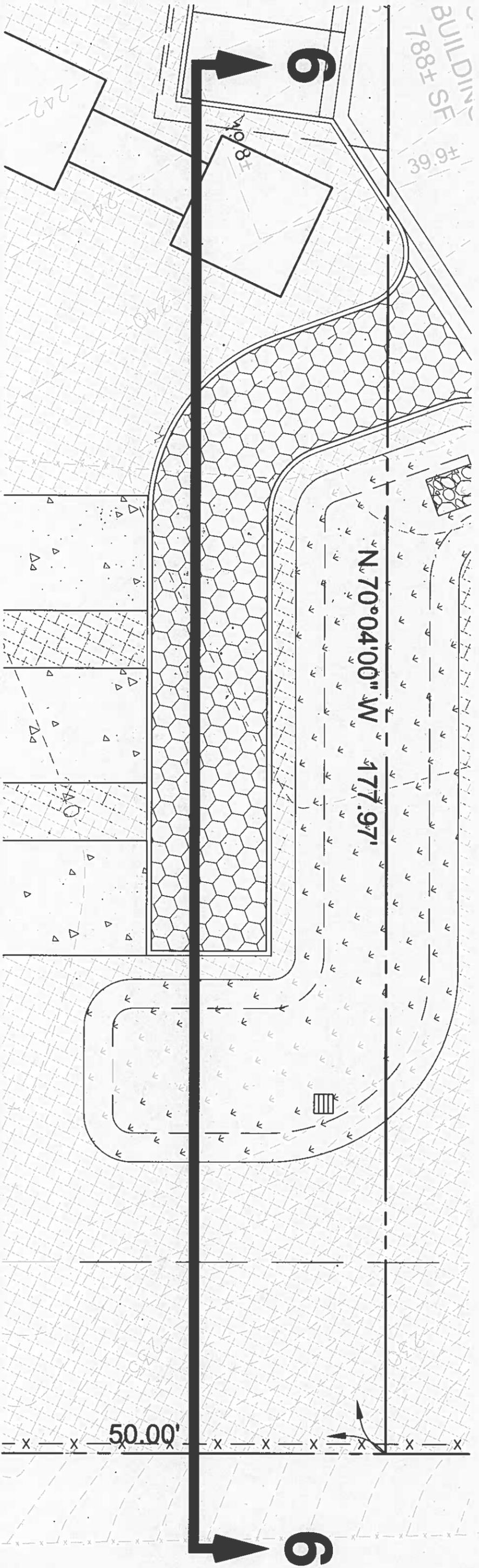


**SECTION 4-4**

SCALE: 1" = 10'-0"



**SECTION 5-5**  
SCALE: 1" = 10'-0"



**SECTION 6-6**

SCALE: 1" = 10'-0"

**Addendum to the Initial Study/Mitigated Negative Declaration**  
**For the**  
**CVS/Pharmacy & Wireless Communication Facility Relocation Project**

**Introduction**

This Addendum to the Pinole Verizon Wireless Initial Study/Mitigated Negative Declaration (IS/MND) provides an analysis of the recently submitted cell tower structure plans for the CVS Project. The intent of the analysis is to confirm the adequacy of the original IS/MND, which was circulated to the public for review and comment from October 30, 2015 to November 30, 2015.

As is demonstrated in the following discussion, the original IS/MND remains adequate and the changes to the project are not such that they would trigger recirculation under CEQA Guidelines Section 15073.5. This section states, in part, that recirculation is not required when new project revisions are added in response to verbal comments on the project's effects.<sup>1</sup>

**Discussion**Aesthetics

The project applicant has submitted additional cell tower plans showing a 61-foot high tower structure, with two design options. The design options are primarily variations on the internal components of the tower structure, such as vertical placement of the proposed lattice elements and the "Welcome to Pinole" banner area.

The proposed height of the cell tower structure evaluated in the IS/MND was 70 feet tall. In addition, the tower structure, as evaluated in the IS/MND, included a capped roof which projected a total of 10 additional feet outside of the vertical tower (five feet on each side).

The newly submitted design for the 61-foot cell tower structure would reduce the prominence of the structure, as compared to the original 70-foot design, and further minimize the change in visual character of the surrounding area, as experienced by residents to the south of the project site. This can be seen in the following photographic comparisons. Figure 1 shows post-project views of the site from an adjacent residence, with cell tower heights ranging from 70 feet (left side) to 60 feet (right side).<sup>2</sup> Figure 2 shows project-project views of the site from the end of El Toro Way, with cell tower structure heights ranging from 70 feet (left side) to 60 feet (right side). Figure 3 also shows the view of the proposed CVS building and approximately 60-foot cell tower structure from the backyard of the nearest residence to the southeast.

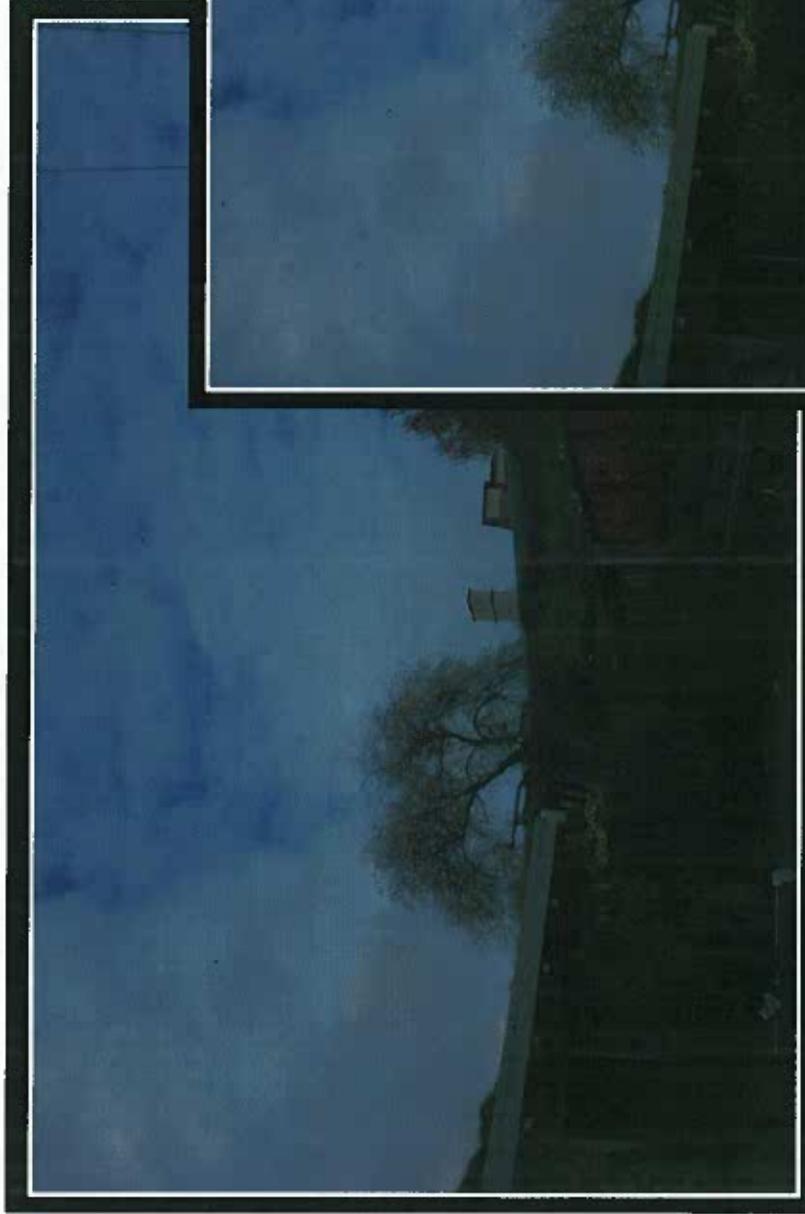
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<sup>1</sup> See CEQA Guidelines Section 15073.5(c)(2).

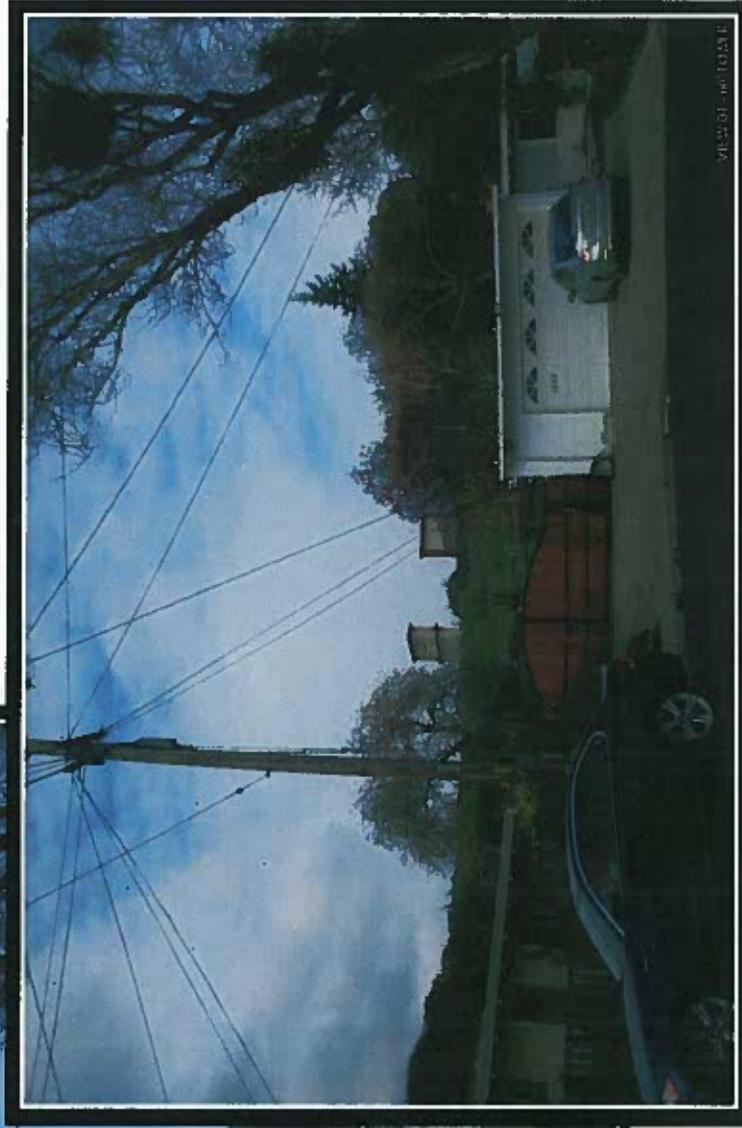
<sup>2</sup> The newly proposed cell tower structure is approximately 61 feet tall, so the fact that these simulations show a 60-foot height will not result in a noticeable difference.



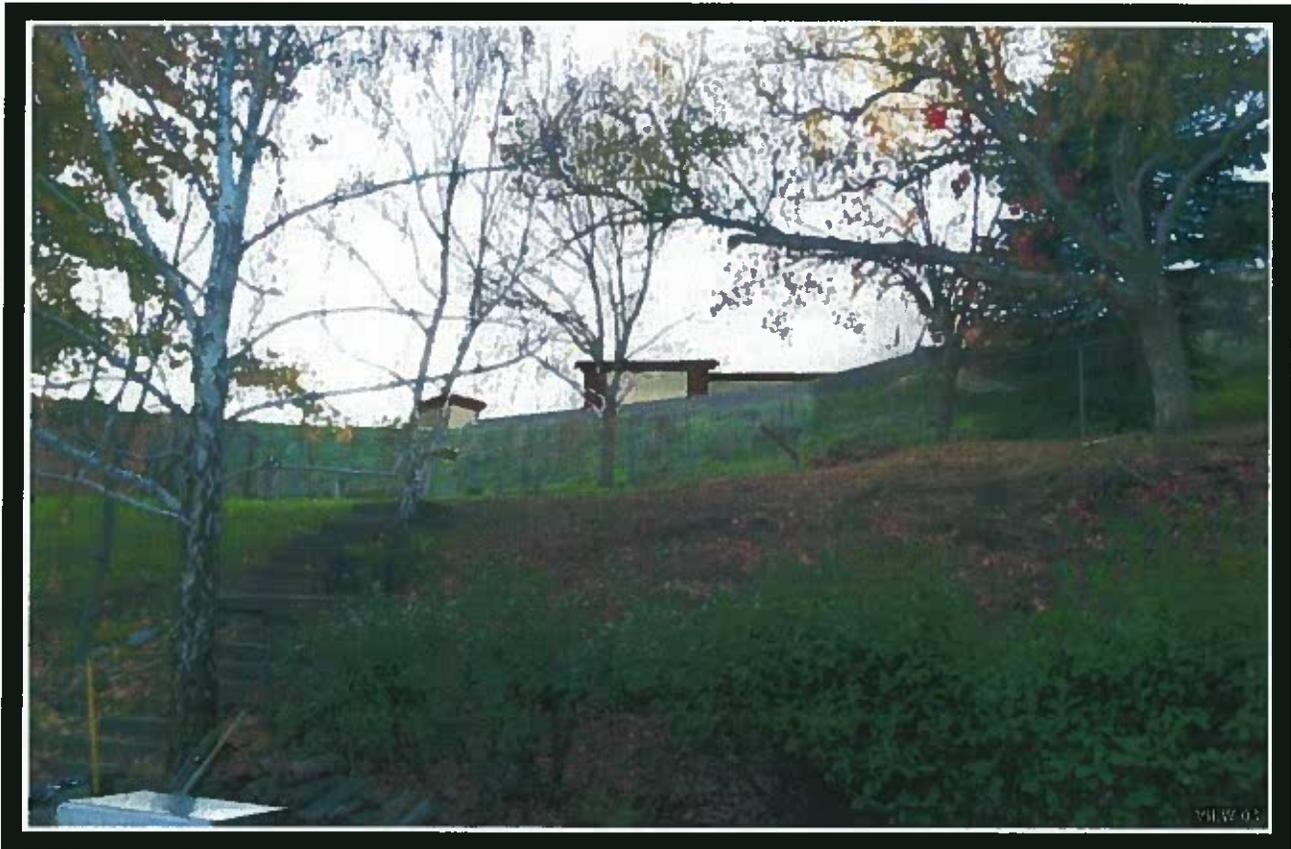
**Figure 1**  
**70-foot Cell Tower Structure (left) versus 60-foot Cell Tower Structure (right)**  
**View from Residence at end of El Toro Way**



**Figure 2**  
**70-foot Cell Tower Structure (left) versus 60-foot Cell Tower Structure (right)**  
**View from Street/End of El Toro Way**



**Figure 3**  
**View of CVS Pharmacy Building and Cell Tower Structure from Nearest Residence Backyard**



Consistent with the conclusion of the IS/MND (page 35), the proposed pylon sign would be partially visible due to its height. However, the pylon structure would constitute a relatively minor encroachment into the skyline. The existing on-site slope would screen much of the building and cell tower structure from view. As a result, the modification of views from residences along El Toro Way looking west would not be considered a substantial degradation in the quality or character of the site or surrounding area.

#### Hazards

Consistent with the original cell tower structure design, the newly submitted plans (see Sheet A-2) show that cellular antennas would be located within the pylons at two different heights. The upper tier would include the Verizon and T-Mobile antennas, while the lower tier is dedicated to possible future carrier(s). Although the new cell tower structure design reduces the height of the structure by nine (9) feet, the vertical placement of the antennas is still substantially similar to the original design. For example, the antenna rad center for the upper tier is 56 feet for the new design and 57 feet for the

original design evaluated in the IS/MND. The antenna rad center for the lower tier is 44 feet for the new design and 42 feet for the original design.<sup>3</sup>

The RF Exposure Study prepared by Hammett & Edison, Inc. for the original cell tower structure design evaluated RF emissions from the upper tier Verizon Wireless and T-Mobile antennas, as these are the two companies who currently have telecommunications facilities on-site. The antenna rad center height evaluated by Hammett & Edison for the upper tier antennas was 57 feet (see Appendix C to the IS/MND, Radio Frequency Study). At this height, and assuming nine antennas for both Verizon Wireless and T-Mobile, Hammett & Edison estimated that for a person anywhere at ground near the site, the maximum RF exposure level due to the proposed T-Mobile and Verizon operations would be 0.018 milliwatt per square-centimeter (mW/cm<sup>2</sup>), which is 2.4 percent of the applicable public exposure limit (see page 72 of the IS/MND). The maximum calculated cumulative level at the second-floor elevation of any nearby building, which is located approximately 60 feet from the proposed pylon structure/antennas, was 3.7 percent of the public exposure limit. The maximum calculated cumulative level at the second-floor elevation of any nearby residence, which is located approximately 250 feet from the proposed pylon structure/antennas, was 3.6 percent of the public exposure limit.

According to Mr. William Hammett, P.E., President of Hammett & Edison, Inc., lowering the antenna rad center for the upper tier Verizon Wireless and T-Mobile antennas by one (1) foot, from 57 feet to 56 feet in height, would have no appreciable effect on the public exposure limits calculated in Hammett & Edison's original RF exposure study for the project.<sup>4</sup>

While, the applicant is interested in securing a third cellular carrier for the site, whose antennas would be located within the lower tier of the cell tower structure, because the applicant has not entered into contract with a third cellular carrier for the project site the future RF emissions associated with a third carrier have not yet been modeled. The third carrier, if interested, would be required to apply for a separate land use approval from the City of Pinole independent of this project. As a result, the IS/MND includes Mitigation Measure VIII-3, which requires the applicant to submit an updated RF study to evaluate the potential future exposure as a result of all on-site antennas, existing and proposed, and compare the results to the applicable FCC exposure limits for cellular uses. Should the RF study conclude that the resulting exposure would exceed the public exposure limit at the nearest receptor, the application shall be denied. Should the RF study conclude that the resulting exposure would not exceed the public exposure limit at the nearest receptor, the application shall be reviewed and approved, subject to approval by the City Development Services Department.

---

<sup>3</sup> For comparison purposes, the existing antenna heights are as follows: Verizon Wireless - antenna rad center is approximately 42 feet in height; and T-Mobile: top of antennas are approximately 37 feet in height, same height as the building parapet.

<sup>4</sup> Personal Communication between Nick Pappani, Vice President of Raney Planning & Management, Inc., and William Hammett, P.E., President & CEO of Hammett & Edison, Inc., January 21, 2016.

City Staff responses to questions are inserted below as italicized text.

TO: COUNCIL MEMBERS AND PLANNING COMMISSION

SUBJECT: CVS DEVELOPMENT

Some outstanding issues in relation to the how the CVS Pharmacy project was handled and how it went through the planning process require additional explanation.

1. PARCELS:

Prior to going through the planning process, what authority was exercised and what steps were taken in the conversion of the four [4] separate parcels into two [2] separate parcels?

*Existing lot lines have not been modified at this time. The consolidation in the number of parcels is proposed by the applicant as part of the site plan review. The development request includes the creation of two parcels from four existing parcels which requires a lot line adjustment and merger as a development condition of approval to establish two legal parcels.*

Since the two [2] parcels have not been properly created, are we to assume that the legal agent for the CVS Pharmacy is the current owner Mr. Mahmoud Namakian who will continue to use the current address on a demolished site?

*The agent for the property owner, Armstrong Development, has also represented CVS in other locations throughout California. This arrangement is fairly common and consistent with application execution. Mr. Namakian continues to be the property owner until there is a purchase of all or a portion of his property by others. The two parcels shown on the project site plan are proposed. The parcels have not yet been created. The property owner has provided authorization for processing the proposed development by the applicant, Armstrong Development. The two new parcels created will be required to obtain City-assigned street addresses prior to issuance of building permits.*

The City will be left without a contact address as well as a CVS Pharmacy representative. Are we to assume that the development fees will be paid by Armstrong Construction or Mr. Namakian who is technically responsible until the required legal processes of transfer of ownership have occurred?

*Prior to project occupancy, the City requires the completion of an emergency contact information form from property owners. If CVS purchases a portion of the property and Mr. Namakian retains a portion of the property as currently proposed, an emergency contact form would be required from both parties. The project will require payment of development impact fees prior to the issuance of any building permits. Development impact fees can be paid by either party referenced in the question. Time of sale of the Namakian property is up to Mr. Namakian and a Buyer.*

What are the legal requirements imposed by State, County and the City of Pinole for severing, realigning property lines and re-parcelization of the four [4] separate lots into two [2] separate parcels?

*Merging of parcels into a lesser number of parcels is reviewed by the City mainly for parcel size consistency with zoning, legal access to all parcels, and legal access to necessary utilities. There are no State or County requirements that pre-empt the City's authority to review and approve the reconfiguration or consolidation of existing parcels within the city limits based on City Municipal Code requirements. A parcel map to the satisfaction of the City does need to be recorded at the County Recorder's Office to legalize the new parcel configuration of the project site. The proposed parcel reconfiguration is reviewed in conjunction with the project site plan.*

2. TITLE:

Will a construction escrow be established for the transfer of ownership and will title insurance be granted to a new owner whose title may be challenged or are you depending on a Quiet title action to address clear title and title insurance?

*To the best of our knowledge, transfer of title will be the "normal" way, inclusive of title insurance. Should the Buyer wish to involve their development funds lender within the same escrow, certain title conditions may be added to the satisfaction of Buyer-Seller-by the Buyer's lender. This is not a topic subject to City review as this property is privately owned.*

3. PERMITS:

Will you schedule a Public hearing and Planning Commission review prior to issuing any more permits?

*No permits have been issued. The development application is continuing through the City's development review process.*

4. PRE-APPLICATION REVIEW:

Has a pre-application review among all parties of the project taken place? Yes.

The purpose of this question is to identify the project design, to identify the size and shape of the new lots so that we, the public most affected by the development, will be informed about the development that will loom above our heads.

*The City did inform all property owners of record within 1,000 feet of the project site on October 29, 2015 and December 3, 2015 about the proposed project through the availability of an environmental review document and through notification of the scheduled public hearing held on December 14, 2015. Additionally, the applicant held a December 3, 2015 neighborhood meeting at the property to exchange information with interested parties.*

5. CITY SUBDIVISION ORDINANCE:

What does our City Subdivision Ordinance say on these types of land use?

*The City Subdivision Ordinance, which needs to be consistent with the State Subdivision Map Act, defers to the City Zoning Ordinance and the applicable Three Corridors Specific Plan regarding the proposed land use on the project site.*

This development will serve a dual purpose - there are two [2] separate development projects: (1) the CVS pharmacy with a drive-thru pharmacy and, (2) the construction of a co-location facility for additional cellular antennas.

*Correct. There are multiple land use requests in conjunction with the proposed project.*

6. MOCK-UP:

Was a mock-up of the cellular tower was not done ten [10] days prior to the Planning Commission Meeting as required by our Wireless Ordinance?

*A mock-up cell tower was not constructed as it was not feasible to safely construct a temporary 70 foot structure out of the same materials and colors that resemble the actual proposed facility. However, photo simulation information was provided to illustrate the height, bulk and design of the proposed pylon antenna structure.*

7. FINAL MITIGATED NEGATIVE DECLARATION

When was the final report of the mitigated negative declaration completed and posted for public review?

*The final mitigated negative declaration was posted online on December 10, 2015 and included two new pages from the draft document that was circulated publicly from October 30 – November 30, 2015.*

8. EMF STUDY:

EIR on EMF Emission and studies have not been done for the temporary COWs which will be constructed. these are required for at least six months near the homeowners property lines on El Toro Way.

*The RF report for the project evaluated emission levels of the long-term wireless facility antennas which will comply with all applicable federal RF threshold requirements. The project mitigation monitoring and reporting program also includes conditions to assure the two temporary cell on wheels (COWs) proposed to be in place for a maximum of six months meet all applicable FCC RF thresholds before activation.*

Are the Wireless Ordinance and no mock-up requirements being waived?

*No. Wireless facility requirements are being applied to the proposed project. The applicant is proposing a temporary method to prevent disruption of service to the two active wireless facility operators on the project site that have existing previously approved conditional use permits and are now proposed to modify and relocate these facilities. The mock-up issue is addressed in question 6 above.*

9. TRAFFIC:

Ingress and Egress issues. The traffic study that was done did not take into account the actual traffic patterns of the affected community nor did it take into account the proximity effects of being close to the Pinole Middle School Campus. Also omitted was the fact that the PMS parents use the old Doctor's Hospital as a pick-up/drop-off location for the PMS. Mann Drive was completely overlooked. Also the traffic study failed to address driving conditions while the sun rises where visibility is rather poor to travel going Canyon Drive toward Appian Way intersection as well as the old Doctors Hospital site for future development.

*The traffic study analyzed the impacts of the proposed project on the environment based on required standards. Traffic concerns associated with the Middle School Campus are a separate matter. The effect of the proposed project on visibility on Canyon Drive was evaluated. The traffic analysis represented a good faith effort to evaluate the project's transportation impacts consistent with legal requirements.*

**James Tillman**

James Tillman  
Citizen 1726  
1726 El Toro Way  
Tel: 510-724-7345



# Memorandum

**TO:** PLANNING COMMISSION MEMBERS

**FROM:** ERIC CASHER and KATHLEEN FAUBION, LEGAL COUNSEL  
WINSTON RHODES, AICP, PLANNING MANAGER  
NEIL GANG, POLICE CHIEF

**SUBJECT:** Zoning Code Text Amendment Prohibiting the Cultivation and Delivery of Medical Marijuana in the City of Pinole

**DATE:** JANUARY 25, 2016

**File: Zoning Code Amendment 16-01**

**Applicant:**  
City of Pinole  
2131 Pear St.  
Pinole, CA 94564

## REQUEST

A Zoning Code Amendment (ZCA 16-01) to modify text in Chapters 17.20 and 17.98, and to prohibit both the cultivation and delivery of medical marijuana within the City of Pinole.

## BACKGROUND

### Federal Law.

Marijuana use for any purpose is subject to the federal Controlled Substances Act, which provides that the manufacture, cultivation, distribution and dispensing of marijuana is illegal for any purpose, and further provides for criminal penalties for marijuana use. The federal law has been addressed by the United States Supreme Court, which held in *Gonzales v. Raich*, 545 U.S. 1 (2005), that the provisions of the federal Controlled Substances Act apply to the personal medical use of marijuana in California, notwithstanding state law to the contrary, as discussed below. Later, the U.S. Supreme Court held in *Raich v. Gonzalez*, 500 F.3d 850 (2007), that the Controlled Substances Act applied to individual's personal medical use of marijuana, and upheld the provisions of the Controlled Substance Act criminalizing the manufacture, distribution, or possession of marijuana to growers and users of marijuana for medical purposes.

Federal enforcement of the Controlled Substances Act in California has been inconsistent. On October 19, 2009, a memorandum from the U.S. Department of Justice indicated the Department's intent to not use federal resources on marijuana prosecution if an individual's actions are "in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana". However, on October 7, 2011, Federal prosecutors announced an aggressive crackdown on California marijuana dispensaries, cited as the first coordinated statewide offensive against marijuana dealers and suppliers. More recently, by memorandum dated July 25, 2013 to the City of Richmond Council, the County District Attorney confirmed the provisions of federal law and advised that distribution of marijuana is a criminal offense under federal law, irrespective of state law or local ordinance permitting such activity.

#### State Law.

On November 5, 1996 the voters of the state of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" ("CUA" or "Act"). The intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain and use it under limited, specified circumstances. Several years later, the California Legislature adopted implementing legislation through Senate Bill 420, effective January 1, 2004. SB 420 added Article 2.5, "Medical Marijuana Program" to Division 10 of the California Health and Safety Code § 11362.7, *et seq.* ("Medical Marijuana Program Act" or "MMPA"). The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws. Health and Safety Code § 11362.83 authorizes cities to adopt and enforce rules and regulations consistent with the MMPA.

While the MMPA intended to clarify the scope of the Act, neither the Federal nor the State government has implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," leaving numerous questions unanswered as to how the CUA and the MMPA should be implemented, particularly in regard to the distribution of medical marijuana through facilities commonly referred to as medical marijuana dispensaries (MMDs). What little State guidance exists is in the form of the California Attorney General "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" issued on August 25, 2008. These guidelines set regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients.

#### Local law.

Health and Safety Code § 11362.765 prohibits the cultivation or distribution of medical marijuana for profit, but neither the CUA nor MMPA imposes operational regulations on medical marijuana dispensaries, collectives or cooperatives (collectively referred to herein as medical marijuana dispensaries, or MMDs). Further, neither the Compassionate Use Act nor the Medical Marijuana Program Act prevents a city from

enacting nuisance and land use regulations regarding medical marijuana use or dispensaries. A city is constitutionally authorized to make and enforce within its limits all local police, sanitary, and other ordinances. (Cal. Const. Art. XI, § 7.) California courts have affirmed a city's ability to prohibit medical marijuana dispensaries and medical marijuana cultivation as part of their traditional land use authority. (*City of Riverside v. Inland Empire Patients Health and Wellness Center, et al.* (2013) 56 Cal.4<sup>th</sup> 729; *Maral et al. v. City of Live Oak*, 221 Cal.App.4<sup>th</sup> 975.) The City of Pinole previously exercised this authority and adopted a prohibition on the establishment and operation of medical marijuana dispensaries anywhere in the City.

### 2015 Legislation.

Several bills regulating medical marijuana were passed by the State Legislature this past session, including Assembly Bill 243, Assembly Bill 266, and Senate Bill 643. These bills do not eliminate cities' authority to regulate medical marijuana within their jurisdictions, and do not affect the City's current ban on medical marijuana dispensaries. The bills would, however, affect the City's authority to regulate medical marijuana cultivation and delivery.

Assembly Bill 243 ("AB 243") added Health and Safety Code section 11362.777, which establishes a dual licensing structure for the cultivation of medical marijuana. Under this section, a person wishing to cultivate medical marijuana must obtain a license from the California Department of Food & Agriculture ("DFA"), as well as a license, permit or entitlement from the local jurisdiction where the cultivation is to take place. Significantly, Section 11362.777 provides that if a local jurisdiction does not have a land use regulation or ordinance prohibiting or regulating cultivation of medical marijuana in effect before March 1, 2016, the DFA will be the sole licensing authority for the cultivation of medical marijuana in that jurisdiction. That is, if the City does not have a prohibition or any regulations in effect before March 1, 2016, the City may lose its ability to control medical marijuana cultivation within the City. If the City has regulations or a prohibition in effect before March 1, the City has the power to later modify the prohibition and/or regulations.

Related Assembly Bill 266 provided that cities wishing to prevent medical marijuana deliveries must affirmatively ban this use. The legislation did not include an adoption deadline.

On January 19, 2016, the City Council approved an urgency ordinance prohibiting medical marijuana cultivation and delivery anywhere in the City. Related ordinances were introduced to amend Titles 5 and 8 of the Municipal Code to prohibit both cultivation and delivery as a health and safety concern and impermissible businesses. The City Attorney and Chief Gang noted various grounds for the prohibition, e.g., that the cultivation of medical marijuana in other cities has resulted in calls for service to the police department, including calls for robbery and thefts. Further, medical marijuana cultivation could pose safety risks for surrounding neighbors, including but not limited to, risks of violent

confrontation in connection with attempts to steal marijuana and the risk of fire from improperly wired electrical lights within structures growing marijuana. These grounds are also applicable to the proposed zoning amendments described below.

## **ANALYSIS**

### **General Plan Consistency and Zoning Code Amendments**

In light of the recently enacted State legislation, the City Attorney's office and staff have proposed amendments to the Zoning Ordinance Chapter 17.20, Allowed Land Uses and Requirements, and Chapter 17.98, Glossary (see below). The proposed amendments will prohibit both medical marijuana cultivation and delivery in every zoning district in the City. The proposed amendments are intended to preserve the City's authority to regulate medical marijuana cultivation within its jurisdiction. If the City has regulations or a prohibition in effect before March 1, 2016, the City will retain the flexibility to maintain, narrow, or lift the prohibition on cultivation at some point in the future.

The Pinole General Plan Community Services and Facilities Element includes Goal CS.2 to ensure and maintain a high level of public safety in the community. The Zoning Code is the principal tool for implementing the City's General Plan in a manner that protects the public health, safety, and welfare of residents and businesses of Pinole. The Zoning Code also facilitates prompt review of development proposals and provides for public information, review, and comment on development proposals that influence the community's quality of life. Finally, the Zoning Code is intended to ensure compatibility between residential and non-residential development and land uses. The proposed amendments prohibition on medical marijuana cultivation and delivery directly addresses and promotes public safety, in accordance with the General Plan.

Amendments to the Zoning Code (Title 17) are required to be reviewed by the Planning Commission and a recommendation forwarded to the City Council for consideration. Therefore, the Zoning Code amendments are described in more detail below. The proposed Zoning Code Amendment 16-01 includes modifications to the use table and glossary definitions to prohibit medical marijuana cultivation and delivery, as follows:

Chapter 17.20. Table 17.20.030-1 in Section 17.20.020 under Retail, Service and Office Uses would be amended as follows to add land use line items for Medical Marijuana Cultivation and for Medical Marijuana Delivery; to add an "N" notation in every zoning district, indicating that such uses are not permitted in any of the City's zoning districts; and to add new Notes (11) and (12) at the end of the table stating that such uses are not permitted in any of the City's zoning districts.

<b>Land Use \ Zoning District</b>	<b>LDR</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4</b>	<b>R</b>	<b>RC</b>	<b>RMU</b>	<b>CMU</b>	<b>OPMU</b>	<b>OIMU</b>	<b>OS</b>	<b>PR</b>	<b>PQI</b>	<b>SPBCA</b>
Retail, Service, and Office Uses															
<b>Medical Marijuana Cultivation</b> <sup>(11)</sup>	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
<b>Medical Marijuana Delivery</b> <sup>(12)</sup>	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N

(11) Medical Marijuana Cultivation is not permitted in any zoning district. See also, Chapter 5.64 and Chapter 8.33.

(12) Medical Marijuana Delivery is not permitted in any zoning district. See also, Chapter 5.64 and Chapter 8.33

Chapter 17.98. A modification to Section 17.98,020, General Definitions, is proposed to add a definition for “medical marijuana cultivation” and for “medical marijuana delivery”. The definitions are provided below.

**“MEDICAL MARIJUANA CULTIVATION”** means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of medical marijuana.

**“MEDICAL MARIJUANA DELIVERY”** means the transfer of medical marijuana or medical marijuana products from a medical marijuana dispensary to a qualified patient or primary caregiver, as well as the use by a dispensary of any technology platform to arrange for or facilitate the transfer of medical marijuana or medical marijuana products.

With approval of the above amendments, medical marijuana cultivation and delivery could not legally be conducted anywhere in the City.

**Planning Commission Subcommittee Review.**

The Planning Commission Subcommittee reviewed the proposed zoning amendments on January 14, 2016. The Subcommittee meeting was attended by Police Chief Neil Gang and concerned draft amendments to regulate outdoor marijuana cultivation. Due to the complexity of these land uses and the limited time provided by the State to adopt local land use regulations, the Subcommittee recommended that the prohibition of cultivation be

brought forward to the full Planning Commission for Zoning Code modifications relating to medical marijuana cultivation and delivery in light of the March 1 deadline.

**California Environmental Quality Act (CEQA) compliance.** The ordinance amendments are not subject to CEQA under the general rule in CEQA Guidelines section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The text amendments prohibit specified land uses; thus, it can be seen with certainty that there is no possibility that the amendments will have a significant effect on the environment.

## **CONCLUSION**

Consistent with recently adopted state law, the proposed Zoning Code amendments will combine with related amendments to the City's business license and other regulations to directly ban both medical marijuana cultivation and delivery, as defined. The proposed amendments also help implement the General Plan and furthers the intent of the Zoning Code. The proposed Zoning Code amendments were reviewed and unanimously recommended by the Planning Commission Development Review Subcommittee to the full Planning Commission for consideration and referral to the City Council for adoption.

## **STAFF RECOMMENDATION**

That the Planning Commission approve Resolution 16-02 recommending that the City Council amend Title 17 of the Municipal Code to prohibit both medical marijuana cultivation and delivery anywhere in the City of Pinole.

## **ATTACHMENTS**

- A. Resolution 16-02

2595459.2

**PLANNING COMMISSION RESOLUTION NO. 16-02  
WITH EXHIBIT A: ZONING CODE AMENDMENTS**

**A RESOLUTION OF THE CITY OF PINOLE PLANNING COMMISSION RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONING CODE AMENDMENT MODIFYING CHAPTER 17.20 AND CHAPTER 17.98 TO PROHIBIT THE CULTIVATION AND DELIVERY OF MEDICAL MARIJUANA IN THE CITY OF PINOLE (ZCA 16-01)**

**WHEREAS**, Health and Safety Code section 11362.5, the Compassionate Use Act of 1996 ("CUA"), adopted by the voters in the State of California, authorizes a limited defense to criminal charges for the use, possession or cultivation of marijuana for medical purposes when a qualified patient has a doctor's recommendation for the use of marijuana; and

**WHEREAS**, Health and Safety Code section 11362.7 *et seq.*, the Medical Marijuana Program Act ("MMPA"), was adopted by the state legislature and offers some clarification on the scope of the Compassionate Use Act of 1996, and section 11362.83 specifically authorizes cities and other governing bodies to adopt and enforce rules and regulations related to medical marijuana; and

**WHEREAS**, neither the CUA or the MMPA prevent a city from enacting nuisance and land use regulations regarding medical marijuana cultivation or delivery. Further, California courts have affirmed a city's ability to prohibit medical marijuana dispensaries and medical marijuana cultivation as part of traditional land use authority. (*City of Riverside v. Inland Empire Patients Health and Wellness Center, et al.* (2013) 56 Cal.4<sup>th</sup> 729; *Maral et al. v. City of Live Oak*, 221 Cal.App.4<sup>th</sup> 975.); and

**WHEREAS**, in 2015 the Legislature passed, and the Governor signed, new legislation which requires certain state agencies to promulgate regulations relating to medical marijuana cultivation and deliveries; and

**WHEREAS**, under the new legislation an individual or entity wishing to cultivate medical marijuana must receive a license from the California Department of Food and Agriculture ("DFA"), which may only provide a license to an individual or entity that has also received a permit, license or entitlement from the city in which the cultivation is to occur; and

**WHEREAS**, the new legislation further provides that if a city does not have land use regulations or ordinances regulating or prohibiting the cultivation of medical marijuana, then commencing on March 1, 2016, the DFA will be the sole licensing authority for medical marijuana cultivation applications in that city; and

**WHEREAS**, a city with a prohibition or regulations regarding the cultivation of medical marijuana in effect before March 1, 2016 retains the authority to later modify that prohibition or those regulations; and

**WHEREAS**, the new legislation further provides that cities wishing to prevent medical marijuana delivery must affirmatively ban this use; and

**WHEREAS**, Article XI, Section 7 of the California Constitution permits a city to make and enforce all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

**WHEREAS**, the Pinole General Plan Community Services and Facilities Element includes a goal (CS.2) to ensure and maintain a high level of public safety in the community; and

**WHEREAS**, Health and Safety Code section 11362.777(b)(3) provides that the DFA may not issue a State license to cultivate medical marijuana within a city that prohibits cultivation within its boundaries under principles of permissive zoning; and

**WHEREAS**, Chapter 5.64 and Chapter 17.20 of the Pinole Municipal Code currently prohibit medical marijuana dispensaries in all zones throughout the City, and marijuana cultivation and delivery is not a permitted use in any zoning district in the City; and

**WHEREAS**, the Zoning Ordinance of the Pinole Municipal Code is adopted and operates under the principles of permissive zoning, and any use that is not expressly permitted is prohibited; and

**WHEREAS**, the City desires to confirm that the cultivation and delivery of medical marijuana is not expressly allowed under the Pinole Municipal Code, and is therefore prohibited throughout the City; and

**WHEREAS**, the City desires to retain local control over the cultivation of medical marijuana, and therefore desires to adopt a land use ordinance prohibiting medical marijuana cultivation as well as delivery; and

**WHEREAS**, the cultivation and delivery of medical marijuana in other cities has resulted in calls for service to the police department, including calls for robberies and thefts; and

**WHEREAS**, medical marijuana cultivation could pose safety risks for surrounding neighbors, including but not limited to, risks of violent confrontation in connection with attempts to steal marijuana and the risk of fire from improperly wired electrical lights within structures growing marijuana; and

**WHEREAS**, the ability to obtain marijuana for medical purposes is available in other jurisdictions within a short drive of the City; and

**WHEREAS**, there is a threat to the public health, safety and welfare of the community if medical marijuana is cultivated and delivered in the City without proper regulations, and such unregulated activity may result in harmful effects to businesses, property owners and residents of the City; and

**WHEREAS**, The Zoning Code is intended to serve as the principal tool for implementing the City's General Plan in a manner that protects the public health, safety, and welfare of residents and businesses of Pinole; and the Zoning Code is intended to facilitate prompt review of development proposals and provide for public information, review, and comment on development proposals that influence the community's quality of life; and the Zoning Code is also intended to ensure compatibility between residential and non-residential development and land uses; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing related to the proposed Zoning Code amendment on January 25, 2016; and

**WHEREAS**, after close of the public hearing, the Planning Commission considered all public comments received both before and during the public hearing, the presentation by city staff including Police Chief Gang, the staff report, and all other pertinent documents regarding the proposed zoning code amendment; and

**WHEREAS**, the proposed ordinance amendments are exempt from the California Environmental Quality Act (CEQA) based on the general rule set forth in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The text amendments prohibit specified uses; thus, it can be seen with certainty that there is no possibility that the amendments will have a significant effect on the environment.

**NOW THEREFORE, BE IT RESOLVED**, that the above recitals are true and correct and made a part of this resolution.

**BE IT FURTHER RESOLVED**, that the Planning Commission of the City of Pinole hereby recommends that the City Council adopt an ordinance amending Chapter 17.20 and Chapter 17.98 of the Pinole Municipal Code to prohibit the cultivation and delivery of medical marijuana as described in Exhibit A, attached to this resolution and incorporated by reference, and finds as follows:

1. The proposed amendments are exempt from CEQA based on the general rule set forth in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The text amendments prohibit specified uses; thus, it can be seen with certainty that there is no possibility that the amendments will have a significant effect on the environment
2. This Zoning Code Amendment is consistent with and supports the Pinole General Plan by helping to ensure and maintain a high level of public safety in the community.

3. This Zoning Code Amendment is intended to avoid the public safety effects that have been shown to be a byproduct of marijuana cultivation and delivery, and avoid the potential incompatibility of such uses with residential and non-residential uses in the City.

**PASSED AND ADOPTED** by the Planning Commission of the City of Pinole on this 25th day of January, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Dave Kurrent, Chair, 2016-2017

ATTEST:

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Winston Rhodes, AICP, Planning Manager

# Exhibit A

## Planning Commission Resolution No.16-02

### EXCERPT

**TABLE 17.20.030-1:  
ALLOWED USES AND REQUIRED ENTITLEMENTS FOR CITY OF PINOLE BASE  
ZONING DISTRICTS**

Land Use \ Zoning District	LDR	R-1	R-2	R-3	R-4	R	RC	RMU	CMU	OPMU	OIMU	OS	PR	PQI	SPBCA
Retail, Service, and Office Uses															
Medical Marijuana Cultivation <sup>(11)</sup>	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N
Medical Marijuana Delivery <sup>(12)</sup>	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N

(11) Medical marijuana cultivation is not permitted in any zoning district. See also, Chapter 5.64 and Chapter 8.33.

(12) Medical marijuana delivery is not permitted in any zoning district. See also, Chapter 5.64 and Chapter 8.33.

## **EXCERPT**

**Added text shown in underscore; all other text of Section 17.98.020 unchanged.**

### **CHAPTER 17.98 GLOSSARY OF TERMS**

Sections:

17.98.010 Purpose.

17.98.020 General definitions.

#### **17.98.010 PURPOSE.**

The purpose of this chapter is to provide general definitions of the terms and phrases used in the code that are technical or specialized in an effort to ensure consistency in the interpretation of the Zoning Code. Definitions are organized alphabetically. (Ord. 2010-02 § 1 (part), 2010)

#### **17.98.020 GENERAL DEFINITIONS.**

...

**MAXIMUM ALLOWABLE RESIDENTIAL DENSITY.** The maximum number of residential units permitted by the city's Zoning Code at the time of application.

**"MEDICAL MARIJUANA CULTIVATION"** means any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of medical marijuana.

**"MEDICAL MARIJUANA DELIVERY"** means the transfer of medical marijuana or medical marijuana products from a medical marijuana dispensary to a qualified patient or primary caregiver, as well as the use by a dispensary of any technology platform to arrange for or facilitate the transfer of medical marijuana or medical marijuana products."

**MEDICAL MARIJUANA DISPENSARY OR DISPENSARY.** Means (1) any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver, in strict accordance with California Health and Safety Code Section 11362.5 et seq.; or (2) any facility, building, structure or location where two qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate in order to collectively or

cooperatively distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant to California Health and Safety Code Section 11362.5 et seq. and such group is organized as a medical marijuana cooperative or collective as set forth in the Attorney General's guidelines. The terms "primary caregiver," "qualified patient," and "person with an identification card" shall be as defined in California Health and Safety Code Section 11362.5 et seq.

For purposes of this chapter, a "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and complies strictly with applicable law, including but not limited to California Health and Safety Code Section 11362.5 et seq.:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code;
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code;
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code;
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code;
5. A residential hospice or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code.

***MENU/ORDER BOARD SIGN.*** A sign installed in a drive-through facility and oriented so as to be visible primarily by drive-through customers.

2595535.2