



**CITY COUNCIL  
REPORT 2016-19**

**5A**

**DATE: FEBRUARY 9, 2016**

**TO: MAYOR AND COUNCIL MEMBERS**

**FROM: WINSTON RHODES, PLANNING MANAGER**

**REVIEWED  
BY: BENJAMIN REYES, CITY ATTORNEY  
MICHELLE FITZER, CITY MANAGER**

**SUBJECT: APPEAL OF A DECISION OF THE PLANNING COMMISSION TO DENY AN APPLICATION BY NSA WIRELESS (VERIZON) FOR A CONDITIONAL USE PERMIT (CUP 14-13) AND DESIGN REVIEW (DR 14-26) TO CONSTRUCT A WIRELESS COMMUNICATION FACILITY ON PRIVATE PROPERTY AT 2518 PFEIFFER LANE (APN 360-131-036)**

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**RECOMMENDATION**

At the conclusion of a *de novo* public hearing and consideration of all evidence and testimony in the public record, it is recommended that the City Council adopt one of the following Resolutions:

2016-XX: Upholding the Decision of the Planning Commission and Denying the Appeal of NSA Wireless (Verizon). (Attachment 2)

2016-XX: Upholding the Appeal of NSA Wireless (Verizon) and Approving a Mitigated Negative Declaration, a Mitigation Monitoring and Reporting Program (MMRP), a Conditional Use Permit (CUP 14-13) and Design Review (DR 14-26) for a Wireless Communication Facility Designed to Appear as a Water Tower on a Portion of Private Property at 2518 Pfeiffer Lane. (Attachment 3)

2016-XX: Upholding the Appeal of NSA Wireless (Verizon) and Approving a Mitigated Negative Declaration, a Mitigation Monitoring and Reporting Program (MMRP), a Conditional Use Permit (CUP 14-13) and Design Review (DR 14-26) for a Wireless Communication Facility Designed to Appear as a Chimney Structure Attached to an Existing Garage and Including a Reconfigured Ground Equipment Area, Additional Landscaping and No Diesel Generator on a Portion of Private Property at 2518 Pfeiffer Lane. (Attachment 4)

## **BACKGROUND**

- **PREVIOUS APPLICATION**

In 2011, the applicant had identified the need for an additional wireless communications facility in the Pinole Valley Park vicinity to improve network service coverage and capacity along the southern portion of Pinole Valley Road.

The applicant submitted a Conditional Use Permit application in September 2011, which the Planning Commission approved on March 25, 2013. The City and Verizon executed a land lease agreement for the park location. In response to community concerns about the City's decision to locate the proposed facility in a City park, the City and Verizon negotiated a settlement agreement that terminated the lease of the park site.

- **CURRENT APPLICATION**

In December 2014 the applicant filed a new application for a Conditional Use Permit and Design Review. The new project site is an approximately 2.86-acre property with a house, shed and detached garage located atop a small hill. The proposed project, as described in this report, is subject to review pursuant to the California Environmental Quality Act (CEQA) and an Initial Study/Mitigated Negative Declaration (MND) was prepared in October 2015.

The proposed project at 2518 Pfeiffer Lane was reviewed by the Planning Commission at a duly-noticed public hearing on November 16, 2015. The project included the installation of nine panel antennas within a 34-foot structure designed to appear as a small, private water tower. The water tower was intended to disguise the antennas and appear as an accessory structure to the adjacent private residence and garage. All required support equipment was placed at the base of the water tower structure within a 27 foot, 5 inch by 19 foot, 5 inch area to be leased by the applicant from the property owners and residents of 2518 Pfeiffer Lane, Michael and Debra Evans. Support equipment included an equipment cabinet and a diesel generator and fuel tank located at the base of the water tower structure. The equipment cabinet would be placed on a new concrete pad. The 30 kilowatt diesel generator would typically run once a week for approximately 15 minutes. A 132-gallon Underwriters Laboratories (UL) 142 fire-rated diesel fuel tank would be provided for the generator. The fuel tank is constructed with a heavy gauge steel secondary containment space to prevent fuel from leaking into the soil or down into Pinole Creek at the base of the subject property. In addition to a chain link security fence, a 6-foot solid redwood fence with a lattice top was proposed to surround the equipment cabinet and water tower base. Additional visual screening was provided by grape vines to be planted on the north, south and west sides of the site (the sides facing adjacent residential properties). Operation of the site would be performed remotely, except for testing the on-site generator. Approximately one trip per month would be required for routine maintenance. The facility is accessed by an extension

of the existing driveway at the end of Pfeiffer Lane that currently serves as access to the existing residence and garage of the property owners. The November 16, 2015 Planning Commission staff report, including the project plans are included as Attachment 5.

At the November 16, 2015 public hearing, the Planning Commission considered an Initial Study/Mitigated Negative Declaration (MND) prepared by the City's environmental consultant, Raney Planning and Management. The environmental review process included a 30-day public review and comment period on the draft MND. The City received a number of comments on the draft MND; although not required by CEQA, the City prepared a written response to all comments received on the draft MND. The MND, all public comments received on the draft during the 30-day comment period and the response to comments are included in this report as Attachment 5. In addition to the Initial Study/Mitigated Negative Declaration, the Planning Commission considered a Conditional Use Permit and Design Review application. At the conclusion of the public hearing and its deliberations, the Planning Commission voted 3 to 1 (with 3 members absent) to deny the Conditional Use Permit and Design Review application requests. The November 16, 2015 Planning Commission meeting minutes are attached (Attachment 6).

The Planning Commission denied the Conditional Use Permit and Design Review applications on the following basis:

1. Concern with the hydrology and drainage off of the site and towards the creek;
2. Aesthetics of the water tower design were not compatible with the residential neighborhood;
3. Aesthetics of the location were not compatible with the single-family area;
4. The proposed diesel generator was not compatible with the single-family area;
5. Concerns with respect to perching the tower at the edge of the bluff on the property;
6. The vegetation for screening the ground-based equipment area was inadequate; and
7. Concern about the proposed facility equipment load on the top of the hill and its effect on the stability of the hillside.

On November 23, 2015, representatives of Verizon filed a timely appeal of the Planning Commission decision. The reasons identified by Verizon as the basis for their appeal are: 1) the Planning Commission's denial was not supported by substantial evidence; and 2) the denial would constitute a prohibition of personal wireless services in violation of the Telecommunications Act. Verizon also provided additional information on January 27, 2016 further explaining the basis for the appeal (Attachment 1).

## **REVIEW AND ANALYSIS**

### **• OPTIONS FOR CITY COUNCIL CONSIDERATION**

In its consideration of the appeal, staff has provided the City Council with three options for a decision. A draft Resolution has been provided for each of the options presented, so that the City Council can take action at the conclusion of the *de novo* public hearing on February 9. Each of the draft Resolutions contain the required findings for the action. The three options are described below.

#### **1. DENY THE APPEAL**

In this option, the City Council would, based on the evidence and testimony in the public record, uphold the decision of the Planning Commission to deny the Conditional Use Permit (CUP 14-13) and Design Review (DR14-26) applications for the Verizon wireless communication facility at 2518 Pfeiffer Lane. A draft Resolution 2016-XX (Attachment 2) has been prepared and would need to be adopted by the City Council to reflect this decision.

#### **2. UPHOLD THE APPEAL AND APPROVE THE WATER TOWER WIRELESS FACILITY**

In this option, the City Council would, based on the evidence and testimony in the public record, uphold the appeal of Verizon and approve the Mitigated Negative Declaration, a Mitigation Monitoring and Reporting Program (MMRP), and the Conditional Use Permit (CUP 14-13) and Design Review (DR14-26) applications for the same Verizon wireless communication facility at 2518 Pfeiffer Lane considered by the Planning Commission on November 16, 2015. That proposed project design would include the features below.

- The installation of nine panel antennas within a 34-foot structure designed to appear as a small, private free-standing water tower intended to disguise the antennas and appear as an accessory structure to the adjacent private residence and garage.
- All required support equipment at the base of the faux water tower structure within a 27 foot, 5 inch by 19 foot, 5 inch area, including an equipment cabinet, 30 kilowatt diesel generator and a 132-gallon Underwriters Laboratories (UL) 142 fire-rated diesel fuel tank.
- A chain link security fence, a 6-foot solid redwood fence with a lattice top surrounding the equipment cabinet and water tower base and additional visual screening by grape vines to be planted on the north, south and west sides of the site (the sides facing adjacent residential properties).

The facility would be located on a mostly level, undeveloped portion of the private property at 2518 Pfeiffer Lane. It is a hilltop property approximately 135 feet above Pinole Creek and approximately 200 feet from the top of the creek bank, which is offsite. The hillside location and the proximity of the creek was the basis for the Planning Commission's concerns about the potential of the project and related site work to create or exacerbate slope instability above the creek and increase the potential for significant erosion or slope failure that would affect the creek. The MND did identify potential environmental impacts from the project in the areas of geology and soils and hydrology and water quality. In response, the MND identified mitigation measures to reduce potential landslide and erosion impacts to less than significant (Mitigation Measures VI-1, VI-2, and IX-1). The MND also identified mitigation measures for potential biology, cultural resources and noise impacts (Mitigation Measures IV-1 to -7, V-1-2, and XII-1). Based on the identified mitigation measures and the applicant's agreement to implement them, the MND concludes that the impacts are less than significant. Draft Resolution 2016-XX (Attachment 3) has been prepared and would need to be adopted by the City Council to reflect this decision and include approval of a Mitigated Negative Declaration, a related Mitigation Monitoring and Reporting Program (MMRP), a Conditional Use Permit and Design Review with Conditions of Approval and findings that the project conforms to applicable provisions of the General Plan and Zoning Ordinance.

### 3. UPHOLD THE APPEAL AND APPROVE AN ALTERNATIVE CHIMNEY WIRELESS FACILITY

Since filing the appeal, the applicant has identified an alternative wireless facility plan to be located on the same property (2518 Pfeiffer Lane), but with modifications designed and located in response to the concerns expressed by the Planning Commission in support of its decision to deny the project (Attachment 8). An appendix to the project MND was prepared on this option (Attachment 7).

In this option, the City Council would, based on the evidence and testimony in the public record, uphold the appeal of Verizon and approve the Mitigated Negative Declaration, a Mitigation Monitoring and Reporting Program (MMRP), and the Conditional Use Permit (CUP 14-13) and Design Review (DR14-26) applications for the Verizon wireless communication facility at 2518 Pfeiffer Lane, but based on the alternative design and site location shown on the plans in Attachment 8. That proposed project design would include the features below.

- The installation of six panel antennas (the original application called for nine panel antennae) within a 25-foot structure (the original application called for 34-foot structure) designed to appear as a chimney attached to the existing garage. The roof-mounted chimney structure would be constructed of visually similar materials and painted the same color as the existing garage and is no more than 7 feet above the highest roof ridge.

- All required support equipment at the base of the chimney structure will be within an 18-foot by 14-foot area (the original plan called for a 27 foot, 5 inch by 19 foot, 5 inch area) adjacent to the existing garage and approximately 30 feet away from the top of the project site slope. This equipment area is at an elevation approximately 135 feet above Pinole Creek and sited approximately 200 feet from Pinole Creek. There will be no diesel generator or fuel tank, eliminating concerns about diesel fumes, potential fuel spills and the noise of monthly maintenance testing. Emergency power will be provided by an on-site back-up battery.
- A 6-foot solid redwood fence with a lattice top will surround the equipment cabinets and additional visual screening by low shrubs to be planted on the north, south and west sides of the site (the sides facing adjacent residential properties).

Grading for site preparation will be reduced due to smaller size of the lease area and the mostly flat site closer to the existing garage. There will be no need to disturb the site adjacent to the slope above Pinole Creek. Access to the wireless facility for any maintenance will continue to be via the existing driveway currently serving the house and garage, which will include a fire department turn-around. The City's environmental consultant has reviewed the alternative and has prepared an appendix to the Mitigated Negative Declaration (Attachment 7). The proposed alternative does reduce some of the potential impacts identified in the assessment of the original project proposal, but does not change the identified mitigation measures needed to ensure impacts are less than significant or the overall determination of a Mitigated Negative Declaration. Draft Resolution 2016-XX (Attachment 4) has been prepared and would need to be adopted by the City Council to reflect this decision and include approval of a Mitigated Negative Declaration, a related Mitigation Monitoring and Reporting Program (MMRP), a Conditional Use Permit and Design Review with Conditions of Approval and findings that the project conforms to applicable provisions of the General Plan and Zoning Ordinance.

- RF EXPOSURE

Throughout this project review process, the City has received many comments from concerned citizens about exposure to the radio frequencies (RF) generated by wireless communication facilities. Federal exposure limit standards were criticized in some comments for being out of date and focused on the wrong impacts to humans and other species. However, federal law prevents local agencies from denying a permit for a wireless communication facility based on exposure to radio frequencies for projects that demonstrate compliance with the established exposure standards. Through the CEQA process, and as part of the public record on this application, several reports from the consulting RF engineer – for the MND, in response to comments received on the MND, and in response to the proposed alternative design and location of the facility at 2518 Pfeiffer Lane - confirm that the maximum possible exposure to residents in the immediate vicinity of the proposed facility is significantly

below the established standards. In addition, should the City Council approve a wireless communication facility under either option #2 or option #3, the conditions of approval require annual monitoring reports be submitted to the City to insure that the facility continues to operate within applicable RF standards (COA #3).

- PUBLIC COMMENTS/DOCUMENTS/SUBMITTALS RECEIVED

In preparation for this hearing City staff received a large volume of submittals from community members. Some of this information was previously provided during prior review of the project and is already publicly available. Duplicates of existing City documents or meeting videos were not included in the public comments/documents/submittals attachment.

As noted above, many comments related to RF concerns. In accordance with the Federal Telecommunications Act, the City cannot consider these concerns so long as the project meets the federal RF exposure limits. Some comments relate to RF effects on biological resources where there is no consensus and no established science-based regulatory standards available.

Concerns raised about landslide possibilities, proximity to Pinole Creek, various issues related to the proposed generator including fire and visual impacts have primarily been addressed by the applicant in their modified proposed design. Additionally, site-specific geotechnical analysis has been performed and measures are available to ensure that the originally proposed facility could be developed without creating significant impacts to the environment. The proposed modifications involve less excavation than the original project design.

Photographic and video submittals related to past landslide and flooding issues at other properties along Pinole Creek were reviewed but are not directly relevant to the discussion of this application as physical conditions and soil conditions vary from location to location. The submitted information was included as part of the record, but will not be addressed further in this report.

Comments submitted on prior Planning Commission or City Council deliberations of this matter are not readdressed in this report.

Some submittals were not in English and the City did not translate those documents for consideration.

- SCOPE OF CITY COUNCIL REVIEW ON APPEAL

Appeals of Planning Commission actions are processed based on the requirements within Section 17.10.070.F of the Municipal Code. The City Council as the appeal body hears the matter *de novo*, i.e., the Council will consider the evidence in the record and come to its own conclusions. The Council shall state the basis for its action on the appeal, and confirm, modify, reverse the Planning Commission action,

in whole or in part, or add or amend such conditions as it deems necessary. The action of the Council as appeal authority is final on the date of decision.

### **FISCAL IMPACT**

The City expended approximately \$6,643 in contract environmental and planning expenses, some attorney's fees, and staff time in processing the appeal. The majority of these costs were borne by the applicant (Verizon).

### **ATTACHMENTS**

(available electronically at <http://www.ci.pinole.ca.us/planning/verizon.html>)

1. Verizon Appeal Letters
2. Resolution 2016-XX (Denying the Appeal)
3. Resolution 2016-XX (Upholding the Appeal – Water Tower Design)
4. Resolution 2016-XX (Upholding the Appeal – Chimney Design)
5. November 16, 2015 Planning Commission Staff Report and Project Plans
6. November 16, 2015 Planning Commission Minutes
7. Appendix to Initial Study/Mitigated Negative Declaration
8. "Chimney Alternative" Project Plans received January 27, 2016
9. Hammett & Edison RF Letter received January 27, 2016
10. City of Pinole and Verizon Settlement Agreement
11. Rules of Appeal
12. New Public Comments/Documents/Submittals