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VIA EMAIL - RMCBAIN@CI.PIEDMONT.CA.US
AND HAND-DELIVERY
Robert McBain, Mayor
and Members of the City Council
City of Piedmont
120 Vista Avenue
Piedmont, CA 94611

Re: Crown Castle NG West LLC: Wireless Communication Facilities (Sites PHS01-PHS09) Design Review Application 16-0385

Dear Mayor McBain,

This office is counsel for Crown Castle NG West LLC ("Crown Castle") with regard to the above-referenced Wireless Communications Facilities applications ("Applications"), which are pending for action by the City of Piedmont ("City").

1. INTRODUCTION.

This responds to the draft resolutions of denial ("Resolutions"), posted on the City's website on October 12, 2017. As a preliminary note, the Resolutions contain significant information and findings -- the detail and substance of which were not discussed or deliberated by the City Council. The Planning Staff's kitchen sink approach has the effect -- whether intended or otherwise -- of sandbagging the applicant, Crown Castle, which was held to a submittal cut-off date of October 11, 2017 -- a day before Crown Castle had access to the Resolutions. The proceedings to date bear the indicia of a blanket prohibition of wireless telecommunications in the City, and the Resolutions are -- at a minimum -- suggestive of a post-hoc rationalization of denials that were all but a fait accompli from the outset of this process. Indeed, of the three sites (of nine total) that the City recommends for approval (PHS-01, -03, -04), the conditions of approval for those sites are so onerous that they are tantamount to denials themselves.[1] Crown Castle submitted its comments to the conditions of approval for those sites on October 11, 2017.

[1] As an example, the vaults required in the conditions of approval will exceed the City's noise threshold of 50 dB when measured at the adjacent property line.

Crown Castle submits this correspondence in furtherance of its rights, as the applicant, to provide evidence and/or information relevant to its Applications up to the date of the hearing. (See, e.g., *Galante Vineyards v. Monterey Peninsula Water Management* (1997) 60 Cal.App.4th 1109, 1119-1120 [applicant has right to present comments "prior to the close of the public hearing on the project."]; *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197 [same principle].)

2. PURPORTED "MISSING, INCOMPLETE, AND INCONSISTENT" INFORMATION IN THE APPLICATIONS.

The Resolutions contain a number of allegations that the Applications contained "missing, incomplete, and inconsistent" information. At various times during the October 2, 2017, hearing, the Planning Staff and various members of the City Council made unwarranted criticisms of Crown Castle concerning this same issue. The draft contentions are without merit for several reasons.

First, pursuant to the Permit Streamlining Act (Gov. Code, § 65920, et seq.) ("PSA") it is the Staff's responsibility to ensure an application is complete before that application proceeds to hearing before the decision-maker. (See, e.g., Gov. Code, § 65943.) The PSA is intended to foster the goal of ensuring a "clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects." (Gov. Code, § 65921.) In furtherance of that policy, the PSA requires local governments to compile a clear list of application requirements which "shall specify in detail the information that will be required from any applicant for a development project." (*Id*., § 65940, subd. (a).) The above provision prohibits cities from changing the application requirements midstream and using such fluid application criteria as a basis for a staving off a determination of completeness. (See Gov. Code, § 65942.) An application cannot be agendized for action unless it is first deemed complete by the city planning staff. (*Ibid.*) If the City Council had insufficient information to make a decision, the fault lies with City of Piedmont Planning Department Staff ("Planning Staff") for not following the PSA, and the City's codified application requirements, which are intended to ensure the decision-maker (in this case, the City Council) have adequate information to render a decision.

Second, Jason Osborne, of Beacon Development, Crown Castle's agent for filing the Applications, signed the Applications on behalf of Crown Castle. Mr. Osbourne twice provided Pierce MacDonald-Powell with a signed letter of agency confirming Beacon's legal authority to sign the Applications on behalf of Crown Castle. Mr. Osbourne also signed the Applications in the presence of Pierce MacDonald-Powell, who acknowledged receipt of those signed Applications. For the Planning Staff to contend that Beacon was not authorized to sign the Applications on behalf of Crown Castle is not only misleading, it directly contradicts the evidence in the administrative record.

Third, as for the purported omissions from the Applications, Crown Castle responded seven times to seven different requests for further information from the senior planner assigned to this case, Pierce MacDonald-Powell, and the Planning Department. Crown Castle also worked closely with the Planning Staff to developed revised designs and locations of the facilities after the Parks Commission and Planning Commission hearings. The purpose of the

redesigns was to address concerns raised by the Community, the Planning Staff and the Parks and Planning Commissions. The Planning Staff gave direct input to Crown Castle on the siting and revised designs of the facilities at the center of the Applications. To have the Planning Staff seek to condemn the Applications with recommendations of denial after so exhaustive and collaborative a process and after significant expenditure of resources by Crown Castle to address City concerns is suggestive of bad faith on the part of the City.

The next sections of this letter feature excerpts from the Resolutions[2] that serve as the purported grounds for denial of the Applications, with a response from Crown Castle.

3. THE DRAFT GROUNDS FOR DENIAL ARE LEGALLY INVALID.

The City's proffered grounds for denial are conclusory assertions that do not rise to the level of evidence -- let alone substantial evidence. After significant input from the City and the public during the June 7, 2017 Park Commission hearing and the June 12, 2017 Planning Commission hearing, Crown Castle and the Planning Staff engaged in exhaustive, collaborative efforts to redesign the facilities and find new, less intrusive locations, heights, and designs for the facilities. Those results yielded smaller antennas, less intrusive sites and lower heights. In fact, whereas the Application once required a number of height and right-of-way clearance variances, the revised designs eliminated the need for any variances. Moreover, the Planning Staff provided direct guidance to Crown Castle in its selection of sites and designs.

Finally, from the outset of this process, Planning Staff invoked a Class Three CEQA exemption for all of the facilities. If it had seriously apprehended the kinds of impacts suggested in the Resolutions, it would have required completion of a mitigated negative declaration or other CEQA environmental review document. The findings of denial do not square with the record or the Planning Staff's determination that the site qualified for a Class Three Exemption, which cannot be invoked if the facilities give rise to significant aesthetic or safety impacts.

A. First Ground for Denial.

> A. *Pursuant to Section 17.46.080.D.1.b, the applicant has not met the priority for location standards of section 17.46.040.A because under the particular circumstances of the proposed installation and site, the wireless communication facility at 150 Highland Avenue is not concealed or collocated as required by Section 17.46.040.A.3 because the antenna would be conspicuous on the existing street light and in the residential landscape …*

Response to First Ground for Denial.

One of the stated grounds of this basis for denial is that the facility is not "collocated." PMC Section 17.46.040.A is designed to encourage "collocation" of wireless telecommunications facilities. It provides:

[2] This letter follows the order of the grounds for denial set forth for PHS-02, but the objections apply to all the Resolutions.

> Collocation. New wireless communication facilities must be collocated with existing facilities and with other planned new facilities whenever feasible. A new wireless tower must be designed and constructed to accommodate future collocation(s) unless the city determines that collocation would be infeasible because of physical or design issues specific to the site.

The PMC defines "collocation" as "[c]ollocation means the location of two or more wireless communication facilities on a single support structure." (PMC, § 17.46.020.)

The City cannot base a denial of PHS-02 on the City's collocation provision because there are no existing wireless facilities within the vicinity of the site upon which Crown Castle can collocate its facility. The absence of existing collocation sites in the City renders this provision inapplicable because collocation, by necessity, would be "infeasible." Nor can the City deny PHS-02 because it is "conspicuous" based on this code section. Making a facility "inconspicuous" is nowhere listed in section 17.46.070A as a codified standard upon which a legally cognizable denial can be made.

B. Second Ground for Denial:

> *i. As demonstrated by the proposed concealment elements of the applicant's proposed facilities with close mount panel antennas and equipment within underground vaults, a smaller profile antenna and complete concealment of communication equipment are feasible. The proposed installation on the particular street light and this site at 150 Highland Avenue is not adequately concealed in that the communication equipment would be located above ground in a cabinet shaped like a U.S. mailbox, the mailbox would not be in service and would attract graffiti and vandalism, and bollards or other traffic control required to protect vehicles from contact with the electronics in the above-ground cabinets would have a cluttered and industrial appearance. An alternative location for the communication equipment, such as within an underground vault, is not readily apparent due to the heavy use of the roadway and the presence of street trees nearby.*

Response to Second Ground for Denial.

The City purports to base this ground for denial on PMC section 17.46.070A.3. Section 17.46.A.3 provides:

> Visual impact. Wireless communication facilities must be designed to minimize visual impacts. When feasible, the facilities must be concealed or camouflaged. The facilities must have a non-reflective finish and be painted or otherwise treated to minimize visibility and the obstruction of views.

As a preliminary note, the site of this facility -- as with all facilities -- was selected by Crown Castle ***in collaboration with the same Planning Staff that drafted the Resolutions.*** The site was chosen after extensive input from the Community and the Planning Staff as the least intrusive location to support the RF coverage objects required for this location. Moreover, the basis for this ground for denial is the proposed above-ground equipment cabinet, which was necessary because existing utilities, underground roots and space constraints rendered an underground vault infeasible. Indeed, this finding concedes that "[a]n alternative location for the communication equipment, such as within an underground vault, is not readily apparent due to the heavy use of the roadway and the presence of street trees nearby." (City of Piedmont City Council Agenda Report (Oct. 16, 2017) ("Agenda Report") at p. 9.) Accordingly, the City has presented no identifiable feasible alternative that would render this facility less intrusive. Having failed to do so, it has failed to rebut Crown Castle's demonstration of least intrusive means. (See, e.g., *T-Mobile U.S.A. Inc. v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987, 998 ["[w] hen a locality rejects a prima facie showing, it must show that there are some potentially available and technologically feasible alternatives."].)

As for the City's conclusory contention that "close mount" antennas are feasible, the antennas are shrouded to employ a low profile. It is not clear what "close mounting" means. Shrouding does not allow for "flush-mounting" as with an unshrouded panel antenna. For the utility pole sites, close-mounting is not possible; an extension arm is required by clearance regulations promulgated by the California Public Utilities Commission (GO95), which mandate safe climbing space in the communication zone where the antennas are proposed. Finally, the antenna dimensions are 24-inches by 14.6 inches for all the denied sites; those antennas were reduced in size from the originally proposed 55-inch panel antennas. They are now the smallest size to adequately achieve the required RF coverage objectives, which include the park. If the antennas were reduced any further in size, coverage would degrade or more antenna nodes would have to be employed, which would necessary result in more sites, more poles and, consequently, a more intrusive design. Smaller antennas would have a lower gain and bigger beam width, which would diminish control of the signal, cause signal "overshoot" and impair propagation to an unacceptable degree.

C. Third Ground for Denial.

> *ii. The project plans filed on September 8, 2017 are incomplete. It is unknown what additional visual impacts may be created by details omitted from the plans such as additional equipment and cabling required by the proposed installation.*

Response to Third Ground for Denial.

Crown Castle supplied voluminous information to the City in accordance with the Planning Staff's application requirements and its seven requests for additional information. It conducted numerous site walks and meetings with the Planning Staff and the Community. The Planning Staff had ample opportunity to ensure that it obtained complete information during that process. As noted above, it is the Planning Staff's responsibility to ensure that an application is complete prior to being agendized for a hearing by the decision-maker. (See, e.g., Gov. Code, § 65943.) If the decision-maker did not have adequate information upon which to render a

decision, the fault lies with the Planning Staff and its codified requirements that must be met to file a complete application.

Aside from that point, this finding contains no evidence -- substantial or otherwise -- upon which to base a denial. Speculation and conjecture do not qualify as substantial evidence. (See, e.g., *Robinson v. City and County of San Francisco* (2012) 208 Cal. App. 4th 950, 959-960 [court rejection of conjectural argument of cumulative impacts based on possible future approvals of wireless networks]; *Hines v. California Coastal Com.* (2010) 186 Cal.App.4th 830, 855–856 [same principle cited]; Pub. Resources Code, § 21080, subd. (e)(2); ["[s]ubstantial evidence is not argument, speculation, unsubstantiated opinion or narrative, [or] evidence that is clearly inaccurate or erroneous …"].)

D. Fourth Ground for Denial.

> *iii. The antenna proposed for the site at 150 Highland Avenue is not as concealed as possible and would be 2 feet tall and 14.6 inches in diameter on an extension atop an existing street light, which adds to its visibility and visual massing in the residential setting. Feasible alternative designs that would mitigate negative visual impacts are available but were not proposed.*

Response to Fourth Ground for Denial.

The City invokes section 17.46.070A.3 as a ground for denial. Section 17.46.A.3 provides:

> Visual impact. Wireless communication facilities must be designed to minimize visual impacts. When feasible, the facilities must be concealed or camouflaged. The facilities must have a non-reflective finish and be painted or otherwise treated to minimize visibility and the obstruction of views.

The Planning Staff bases its proposed denial on a contention that the facility is not a "concealed as ***possible***." (Agenda Report at p. 9.) Section 17.46.070A.3 only requires facilities to be concealed or camouflaged "when feasible." Since the City's own code does not feature the stringent "as concealed as possible" standard, the Planning Staff has no legal justification to propose a denial on such an uncodified standard. It is a fundamental principle of municipal law that neither staff nor city decision-makers can create requirements -- whether procedural or substantive -- that are not featured in the city's legislative enactments. (See, e.g., *Woody's Group, Inc. v. City of Newport Beac*h (2015) 233 Cal.App.4th 1012, 1024-1027.) By denying Crown Castle's applications because the antennas are "not as concealed as possible," the City is writing onerous measures into the code which are not there. As for the City's conclusory contention that "close mount" antennas are feasible, the antennas are shrouded to employ a low profile. Shrouded antennas cannot be "flush mounted" to the pole like unshrouded panel antennas. For the utility pole sites, close-mounting is not possible; an extension arm is required by clearance regulations promulgated by the California Public Utilities Commission (GO95), which mandate safe climbing space in the communication zone where the antennas are proposed.

Finally, the antenna dimensions are 24-inches by 14.6 inches for all the denied sites; those antennas were reduced in size from the originally proposed 55-inch panel antennas. They are now the smallest size to adequately achieve the required RF coverage objectives, which include the park. If the antennas were reduced any further in size, coverage would degrade or more antenna nodes would have to be employed, which would necessary result in more sites, more poles and, consequently, a more intrusive design. Smaller antennas would have a lower gain and bigger beam width, which would diminish control of the signal and impair propagation to an unacceptable degree.

E. Fifth Ground for Denial.

1. The proposed communication equipment is shown located within an above-ground cabinet shaped like a U.S. mailbox in an area of the sidewalk that is already constrained between a pedestrian curb ramp and driveway.

Response to Fifth Ground for Denial.

This ground for denial is based on section 17.46.070 A. 4 and 5, which provide:

> 4. Public health, peace and safety. A wireless communication facility may not adversely affect the public health, peace and safety.
>
> 5. Public right-of-way. A wireless communication facility located in the public right-of-way may not cause: (i) physical or visual obstruction, or safety hazard, to pedestrians, cyclists, or motorists; or (ii) inconvenience to the public's use of the right-of-way.
>
> Equipment, walls, and landscaping located above grade must be at least 18 inches from the front of the curb and not interfere with the public's use of the right-of-way.

The ground for denial does not adequately explain how the location of the equipment cabinet obstructs the public rights-of-way or otherwise causes a safety hazard; in fact the cabinet is proposed to be sited in an existing brick "greenbelt" that is adjacent to the ten-foot sidewalk. (See constructions drawings for PHS-02, Exhibit "A" to my September 12, 2017, letter to the City Council.) For example, the ten-foot sidewalk and pedestrian ramp for PHS-02 would be not be impeded in any way. The site and design for PHS-02 and all of the proposed sites were selected with the input of the Planning Staff as the least intrusive proposal. If the City Council can recommend a specific alternative location for the cabinet, Crown Castle would be happy to investigate relocation of the cabinet or a pole-mounted equipment configuration.

F. Sixth Ground for Denial.

2. The Existing Site Plan (Sheet EP-1), Landscape Plan (LP-1), Proposed Site Plan (Sheet SP-1), and Survey (O-1) incorrectly show the driveway to 4 Pala Avenue and do not show or incorrectly label the addresses of the properties immediately

> *adjacent to the proposed installation. Actual field measurements of the driveway reveal that the driveway is within 6 feet of the pedestrian curb ramp and the proposed above-ground equipment cabinet is sited in front of the narrow angled driveway to 4 Pala Avenue, blocking sightlines of motorists, cyclists and pedestrians.*

Response to Sixth Ground for Denial.

This ground for denial merely states, in conclusory fashion, that the location of the cabinet would block sightlines of motorists, cyclists and pedestrians. It otherwise provides no evidence of how such sightlines would be obstructed. In fact, the cabinet is proposed to be sited in an existing brick "greenbelt" that is adjacent to the ten-foot sidewalk. (See constructions drawings for PHS-02, Exhibit "A" to my September 12, 2017, letter to the City Council.) The ten-foot sidewalk and pedestrian ramp would be not be impeded in any way. In any event, if the City Council can recommend a specific alternative location, Crown Castle would be happy to investigate relocation of the cabinet.

With regard to PHS-05, and the City's assertion that it has no assurance that the Joint Pole Authority ("JPA") would move the pole two feet from the back of the curb, as opposed to the purported 8.5 distance where the utility pole currently sits, it is common industry practice for Crown Castle to secure pole swaps with the JPA as part of the post-zoning encroachment permit process. Securing JPA pole swaps at the planning stage would be premature and unwarranted. As with all of the other grounds cited, this does not qualify as a legitimate ground for denial.

With regard to purported impacts to San Francisco Bay and Oakland skyline views (PHS-06), Crown Castle significantly reduced the height of the facility from the originally proposed project. It now tops out at 26 feet, six inches -- well under the 35-foot height limit -- and employs a smaller antenna to minimize any view impacts. It is the least intrusive design and location available. More importantly, as stated elsewhere in this letter, the location of PHS-06 was selected with input from the Planning Staff as the least intrusive proposal.

For similar reasons, the City's concerns about the vault for PHS-06 are misplaced. The location was selected with the input of the Planning Staff to avoid a steeper grade at the originally considered location (the cross street). The 13 percent grade is minimal where the equipment is currently proposed and does not present any safety issues. If the City disagrees, Crown Castle is willing to investigate other alternatives, such as pole-mounted equipment. Since Crown Castle has already worked extensively with the Planning Staff to come up with the proposed site and design, Crown Castle would need to have input from the Planning Staff and/or the City Council as to a ***specific*** design alternative that it would deem to be less intrusive.

G. Seventh Ground for Denial.

> *3. Plans show that the proposed antenna would be located within the tree canopy of a City street tree, requiring clearance pruning to provide lines of sight for signal propagation and damaging a City street tree in this particular location.*

Response to Seventh Ground for Denial.

Crown Castle, in collaboration with the Planning Staff, chose this location in part due to the existing foliage, which helps to conceal the facility and therefore mitigate any view impacts. To the extent pruning is necessary, Crown Castle will cooperate in facilitating any such pruning services in a manner that does not impact the existing tree. It is not clear how this concern rises to a cognizable ground for denial under the City's code.

H. Eighth Ground for Denial.

4. The proposed installation at the location at 150 Highland Avenue will cause an inconvenience to the public's use of the right-of-way and will interfere with the public's use of the right-of-way. The proposed aboveground equipment cabinet would encroach into the pedestrian path of travel in an area of the sidewalk which is already occupied by a driveway curb cut, pedestrian curb ramp, undergrounded utility cabinets, and street light, and the addition of an above-ground cabinet and required traffic bollards or other protection would further constrain the existing and historic flow of pedestrian traffic at this location.

Response to Eighth Ground for Denial.

The ground for denial does not adequately explain how the location of the equipment cabinet obstructs the public rights-of-way or otherwise causes a safety hazard; in fact the cabinet is proposed to be sited in an existing brick "greenbelt" that is adjacent to the ten-foot sidewalk. (See constructions drawings for PHS-02, Exhibit "A" to my September 12, 2017, letter to the City Council.) The ten-foot sidewalk and pedestrian ramp would be not be impeded in any way. As for any of the facilities recommended for denial, if the City Council can recommend a specific alternative location, Crown Castle would be happy to investigate relocation of the cabinet or, alternatively, a pole-mounted radio configuration. Crown Castle has already sought the input of staff on the proposed designs and locations. The City has presented no identifiable feasible alternative that would render this facility less intrusive and avoid the proposed finding of denial. Having failed to do so, it has failed to rebut Crown Castle's demonstration of least intrusive means. (See, e.g., *T-Mobile U.S.A. Inc. v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987, 998 ["[w] hen a locality rejects a prima facie showing, it must show that there are some potentially available and technologically feasible alternatives."].)

I. Ninth Ground for Denial.

5. The proposed changes to the street light are likely to create sidewalk obstructions because the plans do not accurately show the relative locations of the street light, antenna, equipment cabinet, required bollards or other traffic control measures, undergrounded utilities, the street curb, curb cuts, and sidewalk width.

Response to Ninth Ground for Denial.

As with many of the Planning Staff's grounds for denial, this ground takes additional swipes at Crown Castle for purportedly incomplete information. Details, such as traffic control measures, underground utilities, street curb cuts, etc. may be appropriate for construction phase (e.g., encroachment permit applications) that must be completed ***after*** zoning approval, but they are generally never required at the planning department phase. The City has no legal ground to deny the Applications on such grounds because its own pre-existing, codified application requirements do not require such information. In any event, Aside from that point, this finding contains no evidence -- substantial or otherwise -- upon which to base a denial. Speculation and conjecture do not qualify as substantial evidence. (See, e.g., *Robinson v. City and County of San Francisco*, (2012) 208 Cal. App. 4th 950, 959-960 [court rejection of conjectural argument of cumulative impacts based on possible future approvals of wireless networks]; *Hines v. California Coastal Com.* (2010) 186 Cal.App.4th 830, 855–856 [same principle cited]; Pub. Resources Code, § 21080, subd. (e)(2); ["[s]ubstantial evidence is not argument, speculation, unsubstantiated opinion or narrative, [or] evidence that is clearly inaccurate or erroneous …"].)

J. Tenth Ground for Denial.

6. The above-ground equipment cabinet creates safety concerns because Fire Department staff cannot apply water to extinguish a fire in proximity to electrical equipment, CO2 could not be contained around the communication equipment which is exposed on all sides, and vehicles traveling on Highland Avenue, an arterial roadway, could come into contact with the electronics in the above-ground cabinet which could electrify the vehicle and create a hazard for emergency personnel and passersby attempting to rescue the occupants.

Response to Tenth Ground for Denial.

As stated by Todd Threw at the October 2, 2017, City Council hearing, of some 25,000 Crown Castle small cell facilities throughout the nation, not one site has led to a fire incident. Moreover, all equipment utilized by Crown Castle is safety rated and construction features would be implemented to address reasonable safety concerns. This ground otherwise is speculative and, if it could ever be justified as a warranted ground for denial, would not only lead to a de facto prohibition on wireless facilities, but would preclude many other utilities in the public rights-of-way. Finally, the Planning Department's findings of denial place Crown Castle in a catch-22 of disapproving use of bollards (see, e.g. "Second Ground for Denial," above), which are employed to avoid vehicular contact with the equipment.

K. Eleventh Ground for Denial.

a. The proposed wireless communication facility is not harmonious or integrated into the residential setting because the 2-foot-tall by 14.6-inchdiameter canister antenna would look out of scale and negatively impact the residential character of the neighborhood,

> *the proposed installation is conspicuous due to its bulky and disproportionate appearance which is thicker than the street light diameter. Other less conspicuous designs are feasible but were not proposed. Plans show communication equipment within an above-ground cabinet that would require bollards or other traffic control to protect vehicles from contact with the electronics in the equipment thus further interfering with the existing community aesthetics in this particular location and area. The proposed installation is within an existing underground utility district and the new above-ground equipment cabinet would be contrary to the purposes and terms of the underground utility district. An alternative location for the communication equipment, such as within an underground vault, is not readily apparent due to the constrained location between a driveway and pedestrian curb ramp, the existing undergrounded utility vaults, heavy use of the roadway in front of the installation, and the presence of street trees nearby.*

Response to Eleventh Ground for Denial.

The stated basis for this ground for denial is "Guideline I-1.c." of the "Piedmont Design Guidelines." By its own terms, Guideline I-1 applies to "new residential construction," and the architectural features thereof. (See City of Piedmont Design Guidelines (City of Piedmont, March 2007) ("Design Guidelines") at p. 18.) The Guidelines themselves define "new residential construction" as

> … the construction of a new residential structure, the reconstruction or major modification of the exterior shell of an existing residence, and the construction of a structure accessory to an existing or new residence excluding garages but including, without limitation, gazebos, arbors, potting sheds, children's play structures and storage buildings.

(*Id.* at pp. 16-17.)

On the face of Guideline I-1, the standards do not apply to utilities in the public rights-of-way, otherwise, it is not clear how any power line or utility pole could ever have been approved and installed in the public rights-of-way of the City. To invoke this standard as a basis of denial of the Applications is a bald attempt to find a blank check to prohibit wireless telecommunications in the City. This ground, and the other ground that rest on the Design Guidelines are invalid on their face, since they address architectural aesthetics that could never apply to utilities. As with all of the other pat and conclusory findings, the City has presented no identifiable feasible alternative that would render this facility less intrusive. Having failed to do so, it has failed to rebut Crown Castle's demonstration of least intrusive means. (See, e.g., *T-Mobile U.S.A. Inc. v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987, 998 ["[w] hen a locality rejects a prima facie showing, it must show that there are some potentially available and technologically feasible alternatives."].)

L. Twelfth Ground for Denial.

b. The proposed installation does not comply with the first goal of the Land Use Element which is "Residential Character - Maintain the character of Piedmont as a residential community," nor with Land Use Element Policy 1.2, Neighborhood Conservation, which reads, "Sustain the balance between homes, private yards, and public space that defines Piedmont's residential neighborhoods. The essential form of the city's residential areas—including the scale and appearance of its homes, the mature vegetation, the views and vistas, the appearance of streets and public places, and the street layout—should be maintained for the long-term future." The proposed installation does not comply with the policy above because the proposed installation would be a bulky, thick and disproportionate canister antenna on an extension atop an existing slender street light, and construction and signal propagation require clearance pruning of one or more City street trees.

Response to Twelfth Ground for Denial.

This ground for denial derives from the City's General Plan Land Use Element, which sets forth qualitative, narrative policies to guide development, not actual zoning requirements. It is the City's Zoning Code that provides actual, quantifiable approval criteria, and that Zoning Code expressly allows wireless telecommunications in the public rights-of-way. (See PMC, § 17.46.040.) When the Planning Staff consulted the City General Plan, it should have consulted Chapter Nine of the General Plan, which applies to "infrastructure, including water, sewer, storm drainage, energy, and telecommunication facilities." (City of Piedmont General Plan ("General Plan"), Chapter Nine: Community Services and Facilities (Apr. 6, 2009).) Chapter Nine of the General Plan acknowledges, that

> Today, internet and mobile telephone use ***are integral to the lives of most Piedmont residents***. These services require fiber optic cables, wireless communication antennae, pole-mounted equipment boxes, and other facilities.

(*Id.* at p. 9-21, emphasis added.) Chapter Nine also sets forth the following goal:

> Policy 35.8: Telecommunication Services: Collaborate with telecommunication service providers to foster access to emerging communication and information technology for Piedmont residents.

(*Id.* at p. 9-27.) Finally, the General Plan also provides the following additional goal:

> Action 35.D: Wireless Internet Service: Investigate the cost and feasibility of providing citywide wireless internet service.

(*Ibid.*)

Such General Plan goals cannot possibly be achieved in the face of the ad hoc, impossible-to-achieve standards the Planning Staff has cobbled together for the Resolutions. As with all of the other pat and conclusory findings, the City has presented no identifiable feasible alternative that would render this facility less intrusive. Having failed to do so, it has failed to rebut Crown Castle's demonstration of least intrusive means. (See, e.g., *T-Mobile U.S.A. Inc. v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987, 998 ["[w] hen a locality rejects a prima facie showing, it must show that there are some potentially available and technologically feasible alternatives."].)

M. Thirteenth Ground for Denial.

> *c. The proposed installation does not comply with Natural Resources and Sustainability Element goal 14, which states "Urban Forest - Conserve and expand Piedmont's tree canopy to create visual beauty, provide shade, prevent erosion and absorb runoff, reduce noise and air pollution, and provide habitat for birds and other wildlife," nor NR&S Policy 14.1: Street Tree Maintenance which reads, "Maintain the city's street trees and recognize their essential contribution to the character and environmental health of Piedmont. The City should continue to perform pruning and tree care on a regular basis to ensure the long-term health of trees and to address conflicts with views, utilities, and public safety." The proposed installation does not comply with the policy above because the proposed antenna within the tree canopy of one or more existing City street trees will require clearance pruning for construction and signal propagation which would damage and degrade the appearance of the street tree and adversely impact the health of the tree(s) and continued growth and vitality …*

Response to Thirteenth Ground for Denial.

It is not clear how the Applications conflict with this provision of the General Plan, which clearly allows for "pruning and tree care on a regular basis to ensure the long-term health of trees and to address conflicts with views, ***utilities***, and public safety." (General Plan, Chapter 5, Natural Resources and Sustainability Element, at p. 5-21.) As with all of the other pat and conclusory findings, the City has presented no identifiable feasible alternative that would render this facility less intrusive. Having failed to do so, it has failed to rebut Crown Castle's demonstration of least intrusive means. (See, e.g., *T-Mobile U.S.A. Inc. v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987, 998 ["[w] hen a locality rejects a prima facie showing, it must show that there are some potentially available and technologically feasible alternatives."].)

N. Fourteenth Ground for Denial.

d. The proposed installation does not comply with Parks, Recreation, and Open Space Element the goal 23, which states "Park Planning and Management - Provide attractive, high-quality parks that accommodate a wide range of recreational needs" nor PR&OS Policy 23.8, Landscaped Medians, Traffic Islands, and Parking Strips, which reads "Recognize the importance of landscaped medians and roadsides, traffic "islands," parking strips, and other planted public open spaces to Piedmont's character and beauty. Encourage and support the planting and care of such areas by community groups and volunteers. See also Design and Preservation Element policies on parking strips and the "public realm." The proposed installation does not comply with the policy above because the plans show placement of the communication equipment within an above-ground vault on the sidewalk in the shape of a U.S. mailbox which would be inconsistent with the existing underground district, would attract graffiti and vandalism, which would require bollards or other traffic control to protect vehicles, and which would create an unusual, awkward, irregular, and discontinuous streetscape which is not beautiful nor in character with the residential setting …

Response to Fourteenth Ground for Denial.

To support a denial, the agency "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) This inconsistency finding is vague, speculative, and conclusory. It does not rise to the level of evidence, let alone substantial evidence and does not otherwise bridge any analytic gap between a cognizable zoning regulation and substantial evidence. Moreover, each of the purported grounds for concern is susceptible of a reasonable mitigation set forth in a condition of approval. It is usual, for instance, for a city to impose reasonable graffiti maintenance requirements.

O. Fifteenth Ground for Denial.

e. The proposed installation does not comply with Design and Preservation Element goal 27, which states "*City Identity and Aesthetics - Ensure that streets, parks, civic buildings, and other aspects of the "public realm" contribute to Piedmont's overall identity, beauty and visual quality;" nor the following policies: D&P Policy 27.1 which reads "Streets as Public Space- Recognize that streets are important public spaces as well as transportation routes. Sidewalks, street trees, landscaping, and other amenities should be provided and maintained to keep these spaces attractive;" nor D&P Policy*

27.2, which reads "Sidewalks and Planting Strips - Manage sidewalk space and planting strips along Piedmont streets to promote pedestrian safety and comfort, enhance visual character, and reduce the impact of vehicle traffic on adjacent yards." The proposed installation does not comply with the policy above because the plans show placement of the communication equipment within an above-ground vault on the sidewalk in the shape of a U.S. mailbox which would be inconsistent with the existing underground district, would attract graffiti and vandalism, which would require bollards or other traffic control to protect vehicles, and which would have a detrimental effect on the visual quality and beauty of the streetscape. The antenna proposed for the site at 150 Highland Avenue is not as concealed as possible and would be 2 feet tall and 14.6 inches in diameter atop a slender street light, which adds to its aesthetically disruptive visibility and visual massing in the residential setting.

Response to Fifteenth Ground for Denial.

To support a denial, the agency "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) This inconsistency finding is vague, speculative, and conclusory. It does not rise to the level of evidence, let alone substantial evidence and does not otherwise bridge any analytic gap between a cognizable zoning regulation and substantial evidence. Moreover, each of the purported grounds for concern is susceptible of a reasonable mitigation set forth in a condition of approval. It is usual, for instance, for a city to impose reasonable graffiti maintenance requirements.

P. Sixteenth Ground for Denial.

f. The proposed installation does not comply with Design and Preservation Element goal 31, which states "Historic Preservation - Identify, preserve, and maintain Piedmont's cultural and historic resources and recognize these resources as an essential part of the city's character and heritage," nor D&P Policy 31.6, Historic Landscapes, which reads, "…Ensure that new public works such as street lights, street furniture, and sidewalks are compatible with the historic context of Piedmont's neighborhoods." The proposed installation does not comply with the policy above because the design of the proposed installation at the location at 150 Highland Avenue does not integrate design elements characteristic of the surrounding neighborhood and therefore is out of place within the historic context of the residences in the project vicinity …

Response to Sixteenth Ground for Denial.

To support a denial, the agency "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) This inconsistency finding is vague, speculative, and conclusory. It does not rise to the level of evidence, let alone substantial evidence and does not otherwise bridge any analytic gap between a cognizable zoning regulation and substantial evidence. Moreover, each of the purported grounds for concern is susceptible of a reasonable mitigation set forth in a condition of approval. It is usual, for instance, for a city to impose reasonable graffiti maintenance requirements. The City otherwise has presented no identifiable feasible alternative that would render this facility less intrusive. Having failed to do so, it has failed to rebut Crown Castle's demonstration of least intrusive means. (See, e.g., *T-Mobile U.S.A. Inc. v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987, 998 ["[w] hen a locality rejects a prima facie showing, it must show that there are some potentially available and technologically feasible alternatives."].)

Q. Seventeenth Ground for Denial.

> *g. The proposed installation does not comply with Community Services and Facilities Element goal 37, which reads "Infrastructure - Provide water, sewer, storm drainage, energy, and telecommunication services in the most efficient, cost-effective, and environmentally sound manner possible," nor CS&F Policy 37.4, Siting and Design of Infrastructure, which reads "Ensure that the siting and design of infrastructure facilities, including water tanks and telecommunication towers, mitigates the potential for adverse visual impacts and is consistent with policies in the Design and Preservation Element." Due to the unnecessary bulky and disproportionate appearance of the canister antenna atop a slender street light, the cluttered and constrained location between the driveway and pedestrian curb ramp, and the discontinuous sidewalk and above-ground equipment configuration, the proposed installation does not comply with the policies above because the design does not adequately mitigate potential adverse visual impacts related to aesthetics …*

Response to Seventeenth Ground for Denial.

Each of the purported grounds for concern is susceptible of a reasonable mitigation set forth in a condition of approval. It is usual, for instance, for a city to impose reasonable graffiti maintenance requirements. The City otherwise has presented no identifiable feasible alternative that would render this facility less intrusive. Having failed to do so, it has failed to rebut Crown Castle's demonstration of least intrusive means. (See, e.g., *T-Mobile U.S.A. Inc. v. City of Anacortes* (9th Cir. 2009) 572 F.3d 987, 998 ["[w] hen a locality rejects a prima facie showing, it must show that there are some potentially available and technologically feasible alternatives."].)

4. CONCLUSION.

For the above reasons, the Resolutions fail to set forth valid findings of denial. Crown Castle's representatives will be on hand to answer any questions about the Project and this letter.

Very truly yours,

Michael W. Shonafelt

MWS

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