

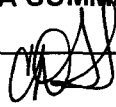
THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Board of Supervisors

BOARD AGENDA # *A-5

Urgent

Routine



AGENDA DATE February 2, 2016

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Set a Public Hearing on March 1, 2016 at 9:05 a.m., to Consider an Appeal of the Planning Commission's Approval of Use Permit Application No. PLN2015-0023, Verizon Wireless - Moffett Road

STAFF RECOMMENDATIONS:

Set a public hearing on March 1, 2016 at 9:05 a.m., to consider an appeal of the Planning Commission's approval of Use Permit Application No. PLN2015-00 23, Verizon Wireless - Moffett Road.

FISCAL IMPACT:

There is a nominal fiscal impact associated with setting this public hearing for mandatory newspaper publishing and the notification of property owners by mail. These expenses are covered by a portion of the \$622.00 Planning Commission appeal fee paid by the Appellant.

BOARD ACTION AS FOLLOWS:

No. 2016-61

On motion of Supervisor O'Brien, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Withrow, DeMartini, and Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) _____ Denied
- 3) _____ Approved as amended
- 4) _____ Other:

MOTION:

ATTEST: 
CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

On January 7, 2016, the Planning Commission approved Use Permit Application No. PLN2015-0023 – Verizon Wireless – Moffett Road a request to construct a new wireless communication facility that includes a 75-foot high monopole with 12 mounted antennas, 184 square-foot equipment shelter, and supporting equipment within a 1,200 square-foot leased area on a 30± acre parcel in the A-2-10 (General Agriculture) zoning district. The project site is located at 4037 Moffett Road, South of E. Service Road, within the City of Ceres' Sphere of Influence. APN: 041-011-012.

An appeal of the Planning Commission decision was submitted by Mackenzie & Albritton LLP, on behalf of their client, Verizon Wireless. In accordance with Stanislaus County Code Section 21.112.040, all appeals of the Stanislaus County Planning Commission's Decision are filed with the Stanislaus County Board of Supervisors. Upon receiving an appeal, the Board of Supervisors places an item setting a public hearing date and time on their agenda for consideration. Once a public hearing date is approved, the Clerk of the Board is required to publish a Notice of Public Hearing in a newspaper of general circulation. The Planning and Community Development Department notifies surrounding property owners by mail, and prepares the public hearing agenda item.

At this time, this item simply sets the date and time for a hearing on the matter before the Board of Supervisors to consider the appeal.

POLICY ISSUES:

Setting a public hearing to consider an appeal of the Planning Commission's decision is consistent with the Board's priority of A Well-Planned Infrastructure System.

STAFFING IMPACT:

There are no staffing impacts associated with this item.

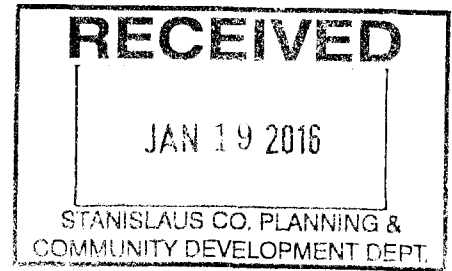
CONTACT PERSON:

Christine Ferraro, Clerk of the Board of Supervisors Telephone: 209-525-4494

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

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

January 15, 2016



VIA EMAIL

Board of Supervisors
Stanislaus County
1010 10th Street, Suite 6500
Modesto, California 95354

Re: Verizon Wireless Appeal of Condition 22
Approved Telecommunications Facility
Stanislaus County Application # PLN2015-0023
4037 Moffett Road

2016 JAN 19 P 2:16
STANISLAUS CO. PLANNING & COMMUNITY DEVELOPMENT DEPT.

Dear Honorable Members of the Board of Supervisors:

We write to you on behalf of our client Verizon Wireless in order to appeal Condition 22 of the approval of the above-referenced Verizon Wireless facility (the "Approved Facility") by the Stanislaus County Planning Commission on January 7, 2016. The Approved Facility is located within the sphere of influence of the City of Ceres (the "City"). Condition 22 was added by the Planning Commission to its approval at the request of the City and unreasonably limits the term of Verizon Wireless' permit to 10 years. In order to justify its investment in wireless services in Stanislaus County, Verizon Wireless seeks a minimum 20-year term for the Approved Facility.

Initially, the City did not support Verizon Wireless's application, stating that the location of the Approved Facility "has a General Plan designation of residential" and "the City's zoning code does not permit cell towers in residential areas."¹ In response, Verizon Wireless argued that while the City's General Plan Land Use Diagram does designate the Application location as intended for high-density residential, this designation does not in any manner preclude placement of a telecommunication facility under the City's General Plan. Further, the broad prohibition of wireless facilities in residential zones violates federal law.

The City's proposed annexation of areas south of the city limits and west of Highway 99 near the Approved Facility is highly speculative and not presently anticipated. Even if annexed, zoned and developed, there is no justification for excluding

¹ CEQA Referral Response Form by James Michaels, City of Ceres Associate Planner, April 23, 2015.

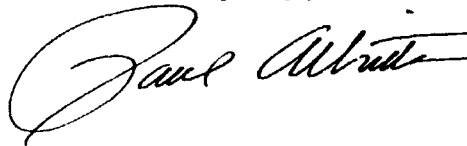
Board of Supervisors
Stanislaus County
January 15, 2016

Page 2 of 2

wireless facilities from residential zones. Verizon Wireless agreed to compromise on a form of Condition 22 allowing annexation of the Approved Facility location by the City, but cannot agree to the limited 10-year term. Verizon Wireless asks that the Board of Supervisors extend the minimum term under Condition 22 up to 20 years. This will allow Verizon Wireless to install the Approved Facility and provide needed wireless service to this important stretch of Highway 99.

A check in the amount of six hundred and twenty-two dollars for payment of the appeal fee is attached to this letter. Thank you for your careful consideration of this appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul Albritton". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Paul B. Albritton

cc: John Doering, Esq.
Timothy Vertino



CLERK OF THE BOARD OF SUPERVISORS

STANISLAUS COUNTY

1010 10th Street, Suite 6700, Modesto, CA 95354
Phone: 209.525.4494 Fax: 209.525.4420

January 21, 2016

Mackenzie & Albritton LLP
Paul B. Albritton
220 Sansome Street, 14th Floor
San Francisco, CA 94104

RE: Appeal of Planning Commission's Approval of Use Permit Application No.
PLN2015-0023 Verizon Wireless – Moffett Road, Condition 22

Dear Mr. Albritton:

We received your Letter of Appeal, on behalf of your clients Verizon Wireless, regarding the Planning Commission's approval of Use Permit Application No. PLN2015-0023, Condition 22. An item requesting that the Board of Supervisors schedule a public hearing on Tuesday, **March 1, 2016 9:05 a.m.**, to consider this appeal, will be on the Board of Supervisors' February 2, 2016, agenda.

For further information, please call the Planning and Community Development Department at 209-525-6330 or the Board of Supervisors at 209-525-6415.

Sincerely,

Pam Villarreal
Deputy Clerk of the
Board of Supervisors

cc: Supervisor Jim DeMartini, District 5
Planning & Community Development Department
Verizon Wireless C/O Epic Wireless C/O Joey Acquistapace
ATM Engineering
Winchester Farms Inc



CLERK OF THE BOARD OF SUPERVISORS

Christine Ferraro Tallman

1010 Tenth Street, Suite 6700, Modesto, CA 95354
Phone: 209.525.4494 Fax: 209.525.4420

**NOTICE OF PUBLIC HEARING
APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF USE PERMIT
APPLICATION NO. PLN2015-0023, VERIZON WIRELESS - MOFFETT ROAD**

NOTICE IS HEREBY GIVEN that on March 1, 2016 at the hour of 9:05 a.m., the Stanislaus County Board of Supervisors will meet in the Chambers, Basement Level, Tenth Street Place, 1010 10th St., Modesto, CA, to consider an appeal of the Planning Commission's approval of Use Permit Application No. 2015-0023, Verizon Wireless – Moffett Road. A request to construct a new wireless communication facility that includes a 75-foot high monopole with 12 mounted antennas, 184 square-foot equipment shelter, and supporting equipment within a 1,200 square-foot leased area on a 30± acre parcel in the A-2-10 (General Agriculture) zoning district. The project site is located at 4037 Moffett Road, South of E. Service Road, within the City of Ceres' Sphere of Influence. APN: 041-011-012.

NOTICE IS FURTHER GIVEN that at the said time and place, interested persons will be given the opportunity to be heard. Material submitted to the Board for consideration (i.e. photos, petitions, etc.) will be retained by the County. If a challenge to the above application is made in court, persons may be limited to raising only those issues they or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board. For further information call (209) 525-6330.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: February 2, 2016

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk of
the Board of Supervisors
of the County of Stanislaus,
State of California.

BY:

Pam Villarreal, Deputy Clerk

Affidavit of Publication

PUBLIC NOTICE

STATE OF CALIFORNIA,
County of Stanislaus

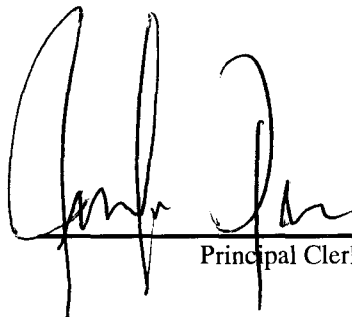
JENNIFER PARGA

Of the said County, being duly sworn, deposes and says:

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of twenty-one years, and not a party to or interested in the above entitled matter. I am the principal clerk of THE CERES COURIER, 138 South Center Street, Turlock, California, a newspaper of general circulation, published in Ceres, California in the City of Ceres, County of Stanislaus, and which newspaper has been adjudged a newspaper of general circulation, by the Superior Court of the County of Stanislaus, State of California. That the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement

FEB 17, 2016

I certify (or declare) under penalty of perjury that the foregoing is true and correct. This 17th day of FEB 2016



Principal Clerk of the Printer

PUBLIC NOTICE

HEARING
APPEAL OF
THE PLANNING
COMMISSION'S
APPROVAL OF USE
PERMIT APPLICATION
NO. PLN2015-0023,
VERIZON WIRELESS -
MOFFETT ROAD

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BY ORDER OF THE BOARD OF SUPERVISORS. DATED: February 2, 2016.

ATTEST: Christine Ferraro Tallman, Clerk of the Board of Supervisors of the County of Stanislaus, State of California. BY: Pam Villarreal, Deputy Clerk.
2/17/2016