

PIEDMONT PLANNING COMMISSION

Special Meeting Minutes for Tuesday, October 29, 2019

A Special Session of the Piedmont Planning Commission was held October 29, 2019, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a), the agenda for this meeting was posted for public inspection on October 23, 2019.

CALL TO ORDER

Chairman Levine called the meeting to order at 5:32 p.m.

ROLL CALL

Present: Commissioners Allison Alessio, Rani Batra, Jonathan Levine, Tom Ramsey, Alternate Commissioner Doug Strout

Absent: Yildiz Duransoy

Staff: Planning & Building Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, Associate Planner Dana Peak, Assistant City Attorney Sergio Rudin

PUBLIC FORUM

There were no speakers for the public forum.

REGULAR CALENDAR

The Commission considered the following item as part of the Regular Calendar:

Wireless Communication Facilities Permits and Exceptions Various Sites

Crown Castle NG West LLC and SureSite (Applicant) request City Council review and approval of wireless communications facilities (WCF) permits and exceptions for proposed installations at 17 sites located within the public rights-of-way in neighborhoods generally north and west of Piedmont Park and Piedmont High School. The group of applications for WCF permits and exceptions are for a proposed small cell telecommunications network intended to improve data coverage and capacity to the immediate area around each installation. The proposed projects include three installations at existing streetlight locations, 13 installations on utility poles, and one strand-mounted antenna located adjacent to a utility pole. None of the proposed facilities include underground equipment vaults beneath the sidewalk. The applications include requests for exceptions from WCF permit development standards to meet state and federal requirements. The requested WCF permit applications for sites PHS10 to PHS18 require review and recommendation by the Planning Commission prior to City Council review. The WCF sites under consideration by the Planning Commission are located near or across from the following addresses:

201 Hillside Avenue (PHS10)
237 El Cerrito Avenue (PHS11)
410 Hillside Court (PHS12)
338 Magnolia Avenue (PHS13)
96 Fairview Avenue (PHS14)
108 MacKinnon Place (PHS15)
100 Palm Drive (PHS16)
185 Wildwood Avenue (PHS17)
523 Boulevard Way (PHS18)

Commissioner Ramsey stated he would need to recuse himself from discussion of site PHS14 located at or near 96 Fairview Avenue as he owns real property located within 500 feet of the site.

Chairmen Levine explained that the discussion will be segmented as allowed by the Political Reform Act. Staff will provide a general introductory report for all proposed sites. Commissioner Ramsey will recuse himself and leave the Council Chamber, and Staff will provide a specific overview of site PHS14. The Planning Commission will hear public testimony regarding site PHS14 and then deliberate and vote on the application. Commissioner Ramsey will return to the Council Chamber for review of the remaining sites.

Building & Planning Director Kevin Jackson reported the applicant has submitted applications for wireless communications facilities installations at 17 sites. The Planning Commission will consider and make a recommendation to the City Council for nine of the sites. In 2016, Crown Castle NG West LLC (Crown Castle) submitted applications to install facilities at nine sites as part of a distributed antenna system with underground vaults for support equipment. In June 2017, the Park Commission and the Planning Commission reviewed the proposals and made recommendations to the City Council. In response to the recommendations, Crown Castle revised the project and resubmitted plans. In October 2017, the City Council considered applications for eight of the sites, denying the applications for five sites and conditionally approving applications for three sites. On November 16, 2017, Crown Castle filed a complaint against the City of Piedmont in federal court. The lawsuit addressed the City's approvals and denials of the eight wireless communications facilities permits. On November 20, 2017, the City Council approved the permit application for a new light post and installation in Piedmont Park, site PHS09, subject to conditions of approval. Site PHS09 was not subject to the litigation and was not included in settlement negotiations. In early 2018, Crown Castle and the City entered into negotiations related to the litigation and, after several months of negotiations, reached a settlement agreement, which improved the design of the installations and potentially resolved the pending litigation. The City Council approved the settlement agreement in December 2018. The settlement agreement provided for Crown Castle to file applications for 18 small wireless installations and required the Council to review the permit applications. If the applications meet the requirements of the settlement agreement and the City Council provides final approval of the permit applications, Crown Castle is obligated to dismiss the pending litigation. Crown Castle has submitted applications for 17 small installations in the public right-of-way on utility poles and street lights. In 2017, the Planning Commission reviewed and made recommendations to the City Council regarding sites PHS01-09. Sites PHS10-18 are new applications, and the Planning Commission is required to review the plans and applications and make recommendations to the City Council for these nine sites. None of the designs include underground equipment vaults. Crown Castle withdrew its application for a nineteenth site on October 3, 2019. Site PHS09, which was not part of the litigation, will be considered separately from the applications currently before the Planning Commission.

Assistant City Attorney Sergio Rudin advised that telecommunications companies regulated by the California Public Utility Commission (CPUC) have a franchise under state law to construct telecommunications facilities, including wireless telecommunications facilities, in the public right-of-way. Under state law, public utilities are required to provide access to power poles for construction of telecommunications facilities. Federal law imposes further restrictions on the City's regulation of small cell facilities located in the public right-of-way. In September 2018, the Federal Communications Commission (FCC) issued an order that limits the City's ability to impose fees, imposes shot clock requirements, and limits the City's ability to regulate the aesthetics for

wireless communications facilities. The City of Piedmont has joined a coalition that is challenging the FCC's order in federal court. The court has declined to stay enforcement of the FCC order; therefore, the order is federal law. In essence, the City can impose reasonable aesthetic requirements on installations, manage the public right-of-way with respect to time, place and manner, and set appropriate conditions for use of the public right-of-way.

With respect to questions from the Commission, Assistant City Attorney Rudin clarified that parameters for limiting aesthetic design are subject to litigation. The FCC's order states that cities are limited to imposing requirements that are reasonable and no more burdensome than is applied to other types of infrastructure deployments. The City has to apply the requirements set forth in the Municipal Code to the applications.

Senior Planner Pierce Macdonald-Powell indicated the projects share characteristics of a 3-foot-tall antenna atop a utility pole, 14-inch-diameter radios covering the antenna, risers covering the power and communications cabling, and two 24-inch by 9-inch by 6.5-inch-rise side-mounted enclosures for radio equipment on the poles along with associated electrical meters and electrical shutoffs. None of the designs include ventilation fans or vaults to locate radio equipment beneath the sidewalk. The proposed designs are some of the smallest, best-concealed, and quietest small cell facilities staff could find in the Bay Area and elsewhere. The staff report outlines the findings and standards applied to installations pursuant to City Code and state and federal law. Public comments have been provided to the Planning Commission and are available for the public in the Council Chambers.

At this point in the public hearing, Commissioner Ramsey recused himself and left the Council Chambers.

Site PHS14 located at or near 96 Fairview Avenue

Senior Planner Macdonald-Powell provided a staff report specific to site PHS14. The Piedmont City Code addresses standards for location, collocation, height, screening, concealment, public safety, sidewalk obstructions, noise, street trees, visual clutter, and the appropriate design for the residential character of the community. The project near 96 Fairview Avenue complies with the standards with an exception to the height limit to meet CPUC requirements. The application proposes a facility located atop a utility pole with a total height of 57 feet 2.5 inches and having the general characteristics previously described. The application is consistent with the goals and policies of the Piedmont General Plan and Design Guidelines. Staff has determined the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(d) of the CEQA Guidelines. No exceptions to the above exemption have been identified that would make the project ineligible for the use of a categorical exemption. Attachment A to the staff report provides a summary of each of the nine sites before the Planning Commission, including 96 Fairview Avenue.

When asked, Senior Planner Macdonald-Powell clarified that the General Plan does not address the height of wireless facilities, but the City Code contains height requirements and a procedure for an exception to the height limit if an exception is required to meet state or federal law. The applicant has requested an exception to the height limit to meet CPUC requirements for spacing the utility lines as a means to ensure safety. The applicant has provided an

explanation as to why the proposed height is necessary to provide the safe distance between power and utility lines. Specifications for the existing utility pole are not available at the current time. The project is currently designed for a single carrier, Verizon. The project may be capable of hosting additional wireless carriers without any change to the equipment.

Director Jackson noted the applicant is required to meet radio frequency (RF) emissions standards set by the federal government, and the application materials indicate RF emissions comply with the standards. The City requires the applicant to comply with all standards at all times and all locations and to notify the City of any changes. The applicant has provided RF emissions reports, which the City's third-party expert has confirmed meet federal standards.

Assistant City Attorney Rudin related that the City cannot regulate the safety of RF emissions. A provision in federal law prohibits the City from making decisions on applications for wireless facilities based on RF emissions as long as the applicant complies with RF emission limits set by the FCC. He did not believe the pending litigation addresses the FCC's limits for RF emissions. Additional collocations would be subject to review for permitting. The City would have an opportunity to verify general safety requirements and ensure collocations comply with applicable CPUC regulations for safety. City Code Section 17.46.80.D sets forth the relevant findings for approving an application. Under the FCC order, a city can no longer deny a proposed installation based solely on the applicant's failure to prove a gap in coverage. Senior Planner Macdonald-Powell added that the applicant has provided existing and proposed signal strengths that show the project will increase service to the Piedmont community.

Public testimony was received from:

Sharon James, applicant representative, responded to questions from Commissioners, stating the applicant has submitted to Planning staff maps indicating the existing and proposed coverages. The RF study is included in the application. RF exposures are typically updated annually or when equipment is added or modified, but a jurisdiction may require more frequent updates. If a carrier wants to add equipment or collocate on a site, Crown Castle would have to submit a modification application to the City. The City cannot deny a modification application that complies with the parameters set by federal law. Theoretically four carriers could collocate on a pole, but practically space and loading would limit the number of carriers collocating on a pole. Usually each carrier requires its own radio on a pole. Doubling the number of radios probably increases the amount of emissions, but it does not necessarily double the amount of emissions. The existing shroud could possibly accommodate a second antenna. A second antenna with a secondary shroud at the top of the pole is not likely. Typically, multiple antennas are located on the crossarms. An antenna could be placed horizontally with City approval of the design. For any project, Crown Castle seeks to utilize existing infrastructure. In the State of California, Crown Castle has the right to access the right-of-way and the jointly owned utility poles. Wireless infrastructure requires a power source.

Director Jackson clarified that carriers are allowed to collocate as long as the collocation does not violate the concealment strategy for the site. If modification of the facility violates the concealment, the modification would be subject to a planning process with public review.

In response to the Commission's inquiries, Director Jackson explained that a horizontal antenna may violate concealment. Staff would need to review the design for a horizontal antenna in order to determine whether it complies with the described concealment. The currently proposed design contains concealment elements, and staff has added a condition of approval that defines the concealment elements. If a future collocation addition of equipment violates concealment, the applicant would be subject to a full planning process. The coverage maps to which Ms. James referred are an attachment to the staff report submitted for Council review of the settlement agreement in December 2018. The coverage maps pertain to the prior and the current designs. The City does not receive rental payments for equipment located on utility poles because the City does not own the utility poles. Assistant City Attorney Rudin clarified that the City cannot charge a lease fee for facilities located in the public right-of-way; however, the City may charge a lease fee for a facility mounted on City-owned infrastructure.

Jim Horner and Elizabeth Shook opposed the proposal to remove 40 percent of the canopy from a liquid amber tree near the proposed installation, suggesting the applicant should find another location for the installation or the City should limit the removal of limbs from the tree.

Michael Miller, applicant representative, reported the applicant's arborist developed the proposal for the tree. The applicant could advise PG&E, who owns the utility pole, to locate the new pole in the original hole or move the new pole away from the tree. The applicant is proposing to install a new pole at the site but not to change the spacing of the utility lines. If the utility lines were not attached to the pole, the height of the pole could be reduced. The applicant did not consider installing poles in new locations.

In general, Commissioner Alessio and Alternate Commissioner Strout stated they could recommend approval of the application for a WCF permit for site PHS14 because the project complies with the City's standards. Alternate Commissioner Strout expressed concern about the effect of the installation on the existing tree.

Commissioner Batra and Chairman Levine generally opposed the application, indicating a preference to delay a decision until the litigation is resolved; the FCC has not met its obligations to review and update RF emissions standards; the application does not include any documentation justifying the specific location of the installation at site PHS14; and the applicant has not provided any information indicating the site will provide service in a new area or improve existing service.

Assistant City Attorney Rudin explained that federal law requires the City to act on an application within a specified period of time or the application is deemed approved. If the City fails to act, the carrier or the wireless provider may claim the City is effectively prohibiting it from installing any projects. Federal law expressly prohibits a city from instituting a moratorium on new wireless applications. Director Jackson added that the settlement agreement provides a small and discrete design for wireless facilities. If the City takes no action, Crown Castle could submit new applications for much larger facilities. The FCC has basically stated a city has no authority to base its decision on coverage or gaps in coverage. Senior Planner Macdonald-Powell clarified that an application for a WCF installation demonstrates a wireless provider's desire to offer new service.

The Planning Commission and staff discussed possible resolutions of a tie vote so that a recommendation could be forwarded to the City Council.

The Commission recessed for a break at 7:07 p.m. and reconvened at 7:20 p.m.

Senior Planner Macdonald-Powell provided copies of a coverage report included in the staff report for the December 17, 2018 Council meeting and that was analyzed by the City's consulting engineer. The analysis reviewed the prior coverage using the 700 MHz bandwidth and the future coverage without the 700 MHz bandwidth but with the additional ten sites. The report included an explanation of RF emissions and the transmission of radio signals as well as a diagram showing the decline in signal strength at certain distances beyond the antenna.

Resolution 188(1) WCF-19

WHEREAS, Crown Castle NG West LLC through SureSite Consulting Group LLC ("Applicant") is requesting permits from the City of Piedmont ("City") for a wireless communication facilities ("WCF") installation within the public right-of-way at or near 96 Fairview Avenue, a site identified in the application materials as PHS14. An additional site identified as PHS09 was filed separately, and an additional site PHS19 was withdrawn from the project application on October 3, 2019. The proposed WCF installation design includes a single canister antenna atop utility poles, cables within covered risers on the sides of the utility poles, and equipment mounted to the side of the utility poles a minimum of 7 feet above adjacent grade, the construction of which requires a WCF permit; and

WHEREAS, as provided in Piedmont City Code Sections 17.46.080 A and B, the Planning Commission is charged with reviewing this application for a WCF permit and making a recommendation to the City Council, which is the decision-making body, because it is a facility proposed in Zone A located within the City-owned public right-of-way; and

WHEREAS, the Planning Commission did not review the site for this facility at its public hearing on June 12, 2017 because the application had not been filed with the City at that time; and,

WHEREAS, on July 9, 2019, the Applicant filed a new application and a new design for the site at or near 96 Fairview Avenue, a site identified in the application materials as PHS14; and

WHEREAS, the equipment proposed to be installed, including the machinery in the pole-mounted enclosure, is considered to be an exterior installation and thereby subject to Building Code requirements related to mechanically-generated noise sources provided in City Code Section 5.4.11, and the Applicant's responses to the WCF permit application states that the WCF permit design does not include noise-generating equipment; and

WHEREAS, the Applicant filed requests for exceptions to the WCF permit development standards pursuant to Section 17.46.080.D.2 of the City Code, which provides the basis for the approval of exceptions to the City's height limit for site PHS14 due to conflicts with federal and state law; and

WHEREAS, based upon the evidence and after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, the Planning Commission finds that the project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to

Section 15303 of the CEQA Guidelines, Construction or Conversion of Small Structures, subsection (d) (water main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction) because the proposed wireless communication facilities are small utility structures located in a developed setting. No exceptions to the above exemption has been identified that would make the proposals ineligible for use of a categorical exemption because the projects' settings are not in a location that is particularly sensitive, the surrounding area is developed and urbanized, and existing utilities are located at or near each of the proposed installations, there are no unusual circumstances relating to the proposed installations, and no scenic highways, hazardous waste sites, or historical resources could be affected by the project; and

WHEREAS, based upon the evidence and after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, the Planning Commission finds that the project, as conditioned, conforms to the criteria and standards of Piedmont City Code Section 17.46.080.D.1, as follows;

- a. The City Code requires the applicant to demonstrate the facilities are necessary to close a significant gap in the operator's service coverage or capacity. In accordance with standards established by FCC Order 18-133, the applicant can be deemed to meet this requirement by instead demonstrating that a denial of the proposed facilities will materially inhibit the applicant's ability to either provide service in a new geographic area, or materially inhibit the introduction of new services or improvement of existing services, and the Applicant has submitted evidence that denial of the project will materially affect its ability to provide services, introduce new services, and improve existing services; and
- b. The applicant has evaluated and met the priority for location standards of Piedmont City Code Section 17.46.040.A.1 in that the proposed site is in Zone A and in the public right-of-way;
- c. The proposals satisfy each of the applicable development standards in Piedmont City Code Section 17.46.070 as follows:
 - A. Development Standards:
 1. Collocation. The new wireless communication facilities are proposed on an existing utility pole location and the wireless communication facilities are designed to accommodate future collocation(s) of other wireless communication facilities unless the city determines that collocation would be infeasible because of physical or design issues specific to the site; and
 2. Height limits; Screening. The new antenna for site PHS14 will be 36 inches tall and the facility is proposed at a height of 57 feet 2.5 inches, as measured to adjacent grade. The applicant requests exceptions to the 35-foot height limit (Code Section 17.46.070.A.2) pursuant to Code Section 17.46.080.D.2 for site PHS14 and has submitted information stating that an exception is warranted on the basis of CPUC safety regulations. As conditioned, the antenna will be concealed in a radome shroud. Radio equipment will be located in shrouds mounted to the side of the utility poles. Cables will be concealed within risers mounted to the side of the utility poles; and

3. Visual impact. As conditioned, the proposed wireless communication facilities are designed to minimize visual impacts because: the cables are proposed to be within the risers attached to the sides of the poles; the pole-mounted shrouds provide the concealment for the communication equipment; the antenna shall be no taller than 36 inches; a 14-inch-diameter radome shroud encases the antenna; and the facilities will have a non-reflective finish and be painted or otherwise treated to minimize visibility and glare; and

As conditioned, the facilities will not bear signs, other than required FCC certifications, warnings, emergency contacts, or other signage required by law or expressly required by the city; and

4. Public health, peace and safety. As conditioned, the wireless communication facilities will not adversely affect the public health, peace and safety. The applicant submitted on July 9, 2019 an RF Emissions Compliance Report prepared by Waterford Consultants, LLC, consulting engineers, stating that the project as proposed will be in full compliance with the Federal Communications Commission regulations and guidelines limiting human exposure to radio frequency emissions; and
5. Public right-of-way. The proposed wireless communication facilities are located in the public right-of-way. The designs and location and the placement of equipment do 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. The equipment is located at least 7 feet vertically from the adjacent grade, has adequate vertical and horizontal clearance, and does not otherwise interfere with the public's use of the right-of-way. As conditioned, the cover of any proposed utility hand hole vault will have a slip resistant surface; and
6. Compliance with laws. The proposed wireless communication facility complies with federal and state statutes governing local agencies' land use authority regarding the siting of wireless communication facilities, including without limitation 47 USC §253, 332(c)(7), 1455(a); California Government Code §§ 50030, 65850.6 and 65964; and California Public Utilities Code Sections 7901 and 7901.1. Each reference to federal and state statutes is to the statute as it may be amended from time-to-time and to the extent the statute remains in effect; and
 - A. Public Works Standard Details. As conditioned, the proposed wireless communication facilities will comply with the Public Works Standard Details for construction within the public right-of-way, and exceptions to specific Public Works Standard Details have been reviewed and approved by the Public Works Director and City Engineer and incorporated into conceptual plans for the facilities reviewed by the City Council on December 17, 2018; and
 - B. Operation and Maintenance Standards. As conditioned, the proposed wireless communication facilities will comply with the operation and maintenance standards provided in Piedmont City Code Section 17.46.070.B; and

- C. Term of Permit. As conditioned, the approved permits for wireless communication facilities will be valid for an initial period of ten years commencing on the approval date of this Resolution subject to renewals pursuant to local, state and federal law; and
- d. Design Guidelines and General Plan. The proposed design of PHS14 is consistent with the Piedmont General Plan in that the scale and mass of the communication equipment are appropriate for the utility poles and streetscape in the Zone A area, the facilities are concealed and camouflaged to blend with their surroundings; and the projects satisfy Piedmont General Plan Policy 35.8, “Telecommunication Services: Collaborate with telecommunication service providers to foster access to emerging communication and information technology for Piedmont residents” and Policy 37.4, “Siting and Design of Infrastructure: Ensure that the siting and design of infrastructure facilities, including water tanks and telecommunication towers mitigate the potential for adverse visual impacts and are consistent with policies in the Design and Preservation Element.” In addition, the proposed designs are consistent with relevant Piedmont Design Guidelines as follows:
- The facilities meet Design Guideline 3.02, “Relation to the Public Realm,” in that the application proposes relatively small radio enclosures and antennas that minimize their visibility. In addition, they are attached to the utility poles in a manner consistent with other utility equipment on the poles and, in the case of the antenna, are meant to be seen as an extension of the pole itself; and
 - The facilities meet Design Guideline 3.03.01.1, “Significant Views,” in that the application proposes radios in cabinets and cables in risers that hug the pole in a manner that avoids an adverse impact on views. Pole top antennas are proposed instead of antennas attached to the side of the utility pole in order to mitigate the overall bulk of the equipment. At site PHS14 where the height of the utility pole with the antenna is proposed to increase in order to meet state and/or federal regulations, the size of the equipment has been kept as small as possible to minimize impacts on views.; and
 - The facilities meet Design Guideline 3.03.02.1, “Visual and Acoustical Privacy, Access to Direct and Indirect Light,” in that the proposed equipment is relatively small in size and is closely attached to utility poles. The application proposes no equipment producing mechanically-generated noise. Therefore, there will be no adverse impact on visual and acoustical privacy or access to direct and indirect light; and
 - The facilities meet Design Guideline 4.04.01.1, “Mechanical Equipment, Noise,” in that the proposed facilities do not include noise-generating equipment; and
 - The facilities meet Design Guideline 4.04.02.1, “Mechanical Equipment, Aesthetic Design,” in that he proposed facilities include concealment and screening devices: a radome to enclose the antenna, shrouds to enclose the radios, and risers to enclose the cables; and
 - The facilities meet Design Guideline 4.04.02.4, “Mechanical Equipment, Aesthetic Design,” in that the cabling for the proposed WCF equipment will be discretely placed within risers attached to the utility pole so that the run is as concealed as possible; and

- The facilities meet Design Guideline 4.04.02.5, “Mechanical Equipment, Aesthetic Design,” in that as conditioned and where feasible, the equipment attached to the utility pole will be painted to closely match the color of the pole; and
- e. Future Collocation. Although future collocation at this site may not be feasible, the proposed facilities have been located and designed for future collocation to the greatest extent reasonable feasible, and the applicant has submitted a statement of its willingness to allow other wireless service providers to collocate on the proposed facilities, recognizing that such collocation may be subject to review by the City.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission resolves that:

SECTION 1. The above recitals are correct and are material to this Resolution and are incorporated into this Resolution as findings of the Planning Commission.

SECTION 2. **Recommendation.** Based on the findings and facts set forth heretofore, the staff report and evidence presented at the public hearing, the Planning Commission recommends that the City Council approve the application for a wireless communication facilities permit for proposed facilities sited at or near 96 Fairview Avenue (a site identified in the application materials as PHS14) in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Conditions in construction documents.** These conditions of approval shall be included as a sheet in the plan set submitted for any City building permit, excavation permit or encroachment permit application (“City-required construction permits”) for the work approved herein.
2. **Design, heights of facilities and diameter of radome shroud.** The antenna shall have a maximum height of 36 inches. The radome shroud on the antenna shall be shown to have a maximum 14-inch diameter dimension. The maximum height, measured from adjacent grade, of site PHS14 shall be 57 feet 2.5 inches. Cables shall be concealed in risers that are the minimum width for the requirements of the current technology. The pole-mounted enclosures used at this facility shall have maximum dimensions of 24 inches by 6.5 inches by 9 inches. Any proposed hand-hole vaults shall have slip resistant lids to the satisfaction of the City Engineer. Stand-off brackets shall mount equipment as close as possible to the side of the utility pole, pursuant to General Order 95 or amendments.
3. **Patch and repair.** The applicant shall patch and repair City sidewalks and other improvements in the public right-of-way affected by applicant’s project construction, such as curbs or walls, to match the color, texture, materials, and scoring pattern of the existing improvements, including custom integral concrete color in accordance with City of Piedmont standard plans and as directed by the Director of Public Works. Directional bore shall be utilized over trenching at the reasonable discretion of the Public Works Director.
4. **Contractor’s general liability insurance.** To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, prior to issuance of any required City permits for construction the applicant shall require all contractors performing work on the Project to maintain a General Commercial Liability policy covering bodily injury, including death, and

property damage that may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The insurance shall include an endorsement requiring 10 days prior notice to the City if the insurance is to be cancelled or changed, and the applicant shall ensure that the contractor immediately arranges for substitute insurance coverage. If the contractor's insurance carrier states in writing that it is unable to provide the required endorsement, then the applicant shall be responsible for providing the City with the required notice if the insurance is to be cancelled or changed. If the applicant self-performs the installation of the facility, the applicant shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

5. **Defense of legal challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including without limitation to CEQA issues, the applicant shall defend, indemnify, and hold harmless the City against any and all liability, fees and costs arising out of the defense, including without limitation the costs of City's own selected legal counsel(s). If such an action is filed, the applicant and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.

6. **Future modifications.** Future modifications of the approved installation that extend beyond the approved project site or that remove or subvert the concealment designs of the approved antenna and equipment, including the cabinets enclosing the radio units, the perimeter of the radome shrouds concealing the antenna(s), shall constitute a new application and shall require new application forms and fees. Applications that extend beyond the approved project site, or that remove or subvert the concealment design of the approved antennas and equipment, or any other request to modify the installation that does not qualify for treatment as an eligible facilities request under Section 6409(a) shall not be eligible for Planning Director review under 47 U.S.C. §1455(a) processing.

7. **Construction Management Plan.** Prior to issuance of City required construction permits for the approved project, the applicant or contractor shall develop a comprehensive Construction Management Plan and file it with the Public Works Director. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, site safety security, and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route and the days and hours permitted for heavy excavation. Outside construction involving high levels of noise, including excavation, hammering, and pile driving, shall be limited to Monday through Saturday, from 8:30 a.m. to 4:30 p.m. Construction personnel shall be instructed not to park in front of driveways to private residences. The plan shall specify the sequencing of pruning, demolition, and construction activities. The City Public Works Director may require modifications and amendments to the Construction Management Plan throughout the course of the Project and until the Final Inspection is approved by the City.

a. **Construction Site Control of Stormwater.** The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional

Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. Prior to the issuance of a building permit, the Applicant shall submit a construction stormwater management plan prepared by a licensed Civil Engineer to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that must be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at cleanwaterprogram.org.

- b. **Continual street access for emergency vehicles.** The Construction Management Plan shall specifically address methods of providing continual street access for emergency vehicles at all times by means of a traffic control permit application submitted by the applicant and reviewed and approved by the Public Works Director.
 - c. **Haul routes.** All equipment and vehicle haul routes shall be provided to the City for review and approval. To the extent possible, haul routes shall attempt to minimize or eliminate use of minor residential roadways. Street and pavement conditions shall be observed and documented by the City on all haul routes prior to commencement of construction. Damage or observable and unusual wear and tear to haul routes on city roadways as specified by the City shall be repaired at applicant's expense after Final Inspection.
8. **Maintenance of facilities.** Applicant shall obtain City of Piedmont permits for maintenance work in the public right-of-way. Except for emergency maintenance needs, the maintenance of the wireless communication facilities shall not occur from 7:30 a.m. to 9:30 a.m. or from 2:30 p.m. to 4:00 p.m. during regular school days of any public schools located in any direction within one-quarter mile of the wireless facility. The prohibited hours for regular maintenance may be adjusted by the Director of Public Works upon at least 30 days written notice to the applicant to accommodate changes in the hours of instruction at the nearby public schools.
9. **Project Security.** Applicant shall provide a performance bond or other form of security, in a form acceptable to the Director of Public Works, and in an amount sufficient to cover the cost of removal and restoration of the public right-of-way. Applicant shall provide an estimated cost of removal and restoration in the form of a quote from a bonded and licensed contractor.
10. **Insurance.** The Applicant shall provide adequate and appropriate insurance covering the Applicant's construction, excavation, and related work involving the project, in a policy form approved by the Director of Public Works and City Attorney, and specifically covering bodily injury, property damage, products and completed operations, in an amount not less than \$1,000,000.00 per occurrence and an aggregate policy limit not less than \$5,000,000.00, and not written on a claims-based policy form.
11. **Height verification.** Prior to completion of the project and final inspection by the City, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the height of the new wireless communication equipment mounted on the utility pole is less than or equal to the height measured from grade adjacent to the utility pole

as shown on the approved plans, subject to the conditions of approval. If the height exceeds the approved height, then the applicant or contractor shall immediately reduce the height of the equipment until it is in compliance with the approved plan.

12. **Concealment design and project site.** As provided in the proposed plans, each antenna radome shroud and equipment enclosure provides concealment for each installation. The outer edge of the equipment as shown in elevation and in ‘plan view’ are identified as the “project site.” Future modifications shall incorporate the highest industry standards for compact designs that minimize visibility and shall not defeat the concealment strategies outlined in this condition of approval.

13. **Term.** The approval of the wireless communication facilities permit is valid for a term of 10 years.

14. **Cables and cabling.** To the best extent possible, the cables to the antennas atop the utility poles or strand mounted shall be enclosed within the risers, sleeves or other shrouds. No more than 5 inches of exposed cables, cabling or wires shall be evident on plans filed for City-required construction permits or evident on each of the wireless communication facility installation after completion of construction.

15. **City monitoring of City street trees.** The applicant and its contractors, partners, or agents are prohibited from performing any tree pruning related to construction, pre-construction clearance, or on-going maintenance and operation after construction. Tree trimming is restricted and may only occur with the approval of the Director of Public Works. The pruning of trees in the public right-of-way or on City-owned property is the exclusive responsibility of the Piedmont Department of Public Works, or its designee. The Applicant shall preserve the health of the existing tree and its limbs by minimizing the impacts of installing a replacement utility pole or by locating the replacement utility pole such that it does not adversely impact the health of the tree, to the extent practical.

16. **Operation and Maintenance Standards.** The facility shall comply with the provisions of City Code Section 17.46.070.B as follows:

- a. Contact and site information. The owner or operator of a wireless communication facility must submit basic contact and site information to the city, and notify the city within 30 days of any changes to this information, including the transfer of ownership. The contact and site information must include: (i) the name, address, email address, telephone number, and legal status of the owner of the facility, including official identification number and FCC certification, and, if different from the owner, the identity and legal status of the person or entity responsible for operating and maintaining the facility; and (ii) the name, address, email address, and telephone number of a local contact person for emergencies.
- b. Signage. The owner and/or operator must post an identification sign at each facility, including owner/operator emergency telephone numbers. The design, materials, colors, and location of the identification signs shall be subject to review and approval by the Director. If at any time a new owner or operator provider takes over operation of the facility, the new operator shall notify the Director of the change in operation within 30 days and the required and approved signs shall be updated within 30 days to reflect the name and phone number of the new wireless service

provider. The colors, materials and design of the updated signs shall match those of the required and approved signs. No sign shall be greater than two square feet in size unless required by law. The facility shall not bear signs other than certification, warning, emergency contacts, or other signage required by law or expressly required by the City.

- c. Non-Interference. Each wireless communication facility must at all times comply with laws, codes, and regulations, and avoid interfering with any city property, facilities, operations, utilities, or equipment.
- d. Facility maintenance. Each wireless communication facility must at all times be maintained in good repair, free from trash, debris, litter, graffiti, and other forms of vandalism. The operator must repair any damage as soon as reasonably possible, but no later than the earlier of 10 days from the time of itself becoming aware of the non-compliance or the receipt of written notification from the City.
- e. Noise. A wireless communication facility must be operated to comply with Chapter 5 of the City Code. Should the noise emanating from the facility be found to exceed the limits provided in City Code Chapter 5, operation of the facility shall cease immediately and shall not resume until a noise verification study prepared by a licensed acoustical engineer shows the facility's compliance with City Code Chapter 5 noise limits. The acoustical engineer shall be selected by the City and the cost of the engineer's services shall be paid by the applicant or wireless communications service provider.
- f. Removal. All wireless communication facility equipment must be removed within 30 days of the discontinuation of the use, and the site and other property restored to its original, preconstruction condition. In addition, the service provider must provide the City with a notice of intent to vacate a site a minimum of 30 days before the vacation.

17. **Modifications to public facilities.** Should the City require modification to public right-of-way or other public facilities in the area of this facility that results in a conflict with the present location of the approved wireless communications facility, the wireless communication facility equipment shall, if necessary as determined by the Director of Public Works, be removed or relocated at the Applicant's expense subject to review and approval of the Director of Public Works.

18. **Expiration of Wireless Communication Facilities Permit.** An encroachment permit, excavation permit or building permit must be issued within one year of the approval of the City Council, and construction completed within two years of the approval of the City Council, or this approval shall be null and void.

19. **Construction Completion Schedule.** Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Applicant shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase.

- a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks as needed: i) Completion of Excavation; ii) Completion of Electrical; iii) Completion of Mechanical; iv)

Completion of Facilities; v) Completion of Hardscaping and Landscaping; and any further construction benchmarks and conditions as may be determined by the Director of Public Works.

- b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the “Approved Schedule” and be binding on the Applicant.

SECTION 3. All portions of this resolution are severable. If an individual component of this Resolution is adjudged by a court to be invalid and unenforceable, then the remaining portions will continue in effect.

Moved by Strout, Seconded by Alessio

Ayes: Alessio, Strout

Noes: Batra

Abstain: Levine

Recused: Ramsey

Absent: Duransoy

Commissioner Ramsey returned to Council Chambers.

Site PHS10 located at or near 201 Hillside Avenue

Site PHS11 located at or near 237 El Cerrito Avenue

Site PHS12 located at or near 410 Hillside Court

Site PHS13 located at or near 338 Magnolia Avenue

Site PHS15 located at or near 116 MacKinnon Place

Site PHS16 located at or near 100 Palm Drive

Site PHS17 located at or near 185 Wildwood Avenue

Site PHS18 located at or near 523 Boulevard Way

Senior Planner Macdonald-Powell reported these eight proposed installations are consistent with the general physical characteristics described at the start of the meeting, Sites PHS10-13 and PHS15-18 range in height from 39 feet to 57 feet 2.5 inches. All of the applications include requests for exceptions to meet CPUC requirements for height. Site PHS16 requires an exception to the 18-inch setback to the front of curb to maintain the sidewalk width in compliance with Americans with Disabilities Act (ADA) requirements. Staff recommends that PHS10-13 and PHS15-18 are consistent with the goals and policies of the Piedmont General Plan and Design Guidelines, particularly General Plan guidelines for telecommunications towers; that the project applications are exempt from CEQA pursuant to Section 15303(d) because the proposed WCF installations are small utility structures located in a developed setting and no exceptions to the exemption have been identified that would make the projects ineligible for the categorical exemption. Staff has introduced into the record coverage reports prepared by Crown Castle and reviewed by the City's technical expert. The reports show signal strengths prior and subsequent to the project. Attachment A to the staff report contains a summary of each of the eight sites. The title page of the coverage report incorrectly states Palo Alto.

When asked by Commissioners, Director Jackson explained that the coverage reports demonstrate that without the 700 MHz bandwidth the additional sites are needed to serve the same area proposed to be served by the facilities proposed in the 2017 applications.

Assistant City Attorney Rudin indicated the WCF permits extend for a minimum of ten years. At the end of the permit term, the applicant may renew the permits or the project will be deemed abandoned. The City Code and conditions of approval require the applicant to remove the installations promptly once they are no longer needed or the permit term expires. The City also requires the applicant to provide a bond to ensure the installations are removed. The FCC order defines collocation for small cell facilities as the ability to install facilities for a wireless service provider on a utility pole with existing facilities for other wireless service providers. Director Jackson added that the Telecommunications Act provides dimensions for expanded facilities as long as the expansion does not violate concealment of a site. The City's ability to regulate collocation expansions is dependent to some degree on the limits prescribed by the FCC and the City's definition of a concealment strategy for the site.

Chairman Levine advised that the coverage reports compare the coverage for sites proposed in 2017 and 2019 and provides no comparison with existing coverage.

Public testimony was received from:

In response to queries from the Planning Commission, Ernesto Figueroa, RF Engineer representing Crown Castle, stated that on the coverage maps green indicates areas of good coverage, yellow indicates areas of weak coverage, and red indicates areas of poor coverage. Service in building is good while service in vehicles and outdoors is weak. The map depicts proposed coverage. He related that he analyzed only the areas identified by the applicant, not the City as a whole. With 1900 MHz and 2100 MHz frequencies, the signal does not extend as far as with the 700 MHz frequency. Increasing the number of nodes compensates for the loss of distance. Typically, nodes are installed more densely in high traffic areas. The utility pole owner does not provide the applicant the right to install facilities on any and every utility pole. In the prior application, the radios were larger and transmitted at a higher power. The applicant routinely utilizes only structures located in the public right-of-way.

Sandra Beck wanted to understand the concentration of installations around Piedmont High School when the area already has good coverage. She suggested the City toll the 90-day period until there is definitive information about the effects of RF emissions.

Kris Kuhl expressed concerns about the installation at 428 El Cerrito, PHS06, obstructing views from his home and causing the value of his property to decline.

Hunter Brasfield questioned the consequences of the Council denying the application, requested clarification of an extension up to 20 feet without approval, and asked if anyone had seen a physical representation of the antenna.

Gayle Young, Eric Behrens, and Ernest Reddick raised concerns about the effects of RF emissions and about the impacts of site PHS10 on seven historically significant homes located on Hillside Avenue.

Darryl and Nancy Lim remarked that site PHS12 appears to be located on their property because it is located only 18 feet from their home and there is no sidewalk in front of the house. The installation will negatively impact the aesthetics and the value of their home.

Michael Costello urged the Planning Commission not to recommend approval as the application is fatally flawed and the RF Emissions Compliance Report is inaccurate.

Alison Parker Schaefer indicated site PHS13 will obstruct her views and negatively affect the aesthetics of her home.

Nathanael Joe Hayashi wanted Crown Castle to provide a proper notice as the previous notices stated three different addresses and to demonstrate compliance with the standards for RF emissions.

Chairman Levine explained that the FCC imposed a requirement for cities to act upon completed applications within a specific time period or the applications are deemed approved. Assistant City Attorney Rudin clarified that federal law imposes a reasonable time period, and the FCC defined a reasonable amount of time. The shot clock for all wireless applications, except for requests for collocation and small cell facilities, is 150 days. The shot clock is 60 or 90 days for collocation and small cell facilities applications.

Assistant City Attorney Rudin advised that should the City Council approve the applications as proposed by Crown Castle, then Crown Castle will dismiss its lawsuit against the City. If the City Council modifies the project or denies the project, then Crown Castle can continue its litigation against the City. The lawsuit against the FCC does not challenge RF emissions standards.

Ms. James reported the small cell sites do not have battery backups. The proposed cell sites will augment existing service to consumers.

Director Jackson indicated utilities can be undergrounded in the areas with wireless facilities. Staff can propose a condition of approval requiring wireless facilities to be removed in areas where utilities are to be undergrounded. If the Planning Commission finds compelling evidence that one or more of the facilities should be located elsewhere, the Planning Commission's recommendation to the City Council could ask the Council to consider alternative locations.

In general, Commissioners unanimously praised staff for negotiating an excellent proposed facility design that has a good concealment strategy, is small in size, and produces no noise. They stated they could recommend approval of the proposed equipment design. However, Commissioners noted that due to the density of the numerous sites in a residential neighborhood and the resulting negative impact on its architecturally significant homes, they could not recommend approval of the project as a whole.

Resolution 188(2) WCF-19

WHEREAS, Crown Castle NG West LLC through SureSite Consulting Group LLC (“Applicant”) is requesting permits from the City of Piedmont (“City”) for wireless communication facilities (“WCF”) installations within the public right-of-way at or near 201 Hillside Avenue, 237 El Cerrito Avenue, 410 Hillside Court, 338 Magnolia Avenue, 108 MacKinnon Place, 100 Palm Drive, 185 Wildwood Avenue, and 523 Boulevard Way, sites identified in the application materials as PHS10, PHS11, PHS12, PHS13, PHS15, PHS16, PHS17, and PHS18, respectively. An additional site identified as PHS09 was filed separately, and an additional site PHS19 was withdrawn from the project

applications on October 3, 2019. The proposed WCF installation design includes a single canister antenna atop utility poles, cables within covered risers on the sides of the utility poles, and equipment mounted to the side of the utility poles a minimum of 7 feet above adjacent grade, the construction of which requires a WCF permit; and

WHEREAS, as provided in Piedmont City Code Sections 17.46.080 A and B, the Planning Commission is charged with reviewing these applications for WCF permits and making a recommendation to the City Council, which is the decision-making body, because they are facilities proposed in Zones A and B located within the City-owned public right-of-way; and

WHEREAS, the Planning Commission did not review the sites for these facilities at its public hearing on June 12, 2017 because the applications had not been filed with the City at that time; and,

WHEREAS, on July 9, 2019, the Applicant filed new applications and new designs for the sites at or near 201 Hillside Avenue, 237 El Cerrito Avenue, 410 Hillside Court, 338 Magnolia Avenue, 108 MacKinnon Place, 100 Palm Drive, 185 Wildwood Avenue, and 523 Boulevard Way, sites identified in the application materials as PHS10, PHS11, PHS12, PHS13, PHS15, PHS16, PHS17, and PHS18, respectively; and

WHEREAS, the equipment proposed to be installed, including the machinery in the pole-mounted enclosure, is considered to be an exterior installation and thereby subject to Building Code requirements related to mechanically-generated noise sources provided in City Code Section 5.4.11 and the Applicant's responses to the WCF permit application states that the WCF permit design does not include noise-generating equipment; and

WHEREAS, the Applicant filed requests for exceptions to the WCF permit development standards pursuant to Section 17.46.080.D.2 of the City Code, which provides the basis for the approval of exceptions to the City's height limit for sites PHS10, PHS11, PHS12, PHS13, PHS15, PHS16, PHS17, and PHS18 and distance to the front of curb requirements for site PHS16 due to conflicts with federal and state law; and

WHEREAS, based upon the evidence and after reviewing the applications, plans and any and all testimony and documentation submitted in connection with such applications, the Planning Commission finds that the projects do not conform to the criteria and standards of Piedmont City Code Section 17.46.080.D.1, as follows;

- a. The applicant has not evaluated and met the priority for location standards of Piedmont City Code Section 17.46.040.A.1 in that the application consistently chose the least desirable location for each installation;
- b. The proposals do not satisfy the applicable development standards in Piedmont City Code Section 17.46.070.A.3, Visual Impact, in that the Planning Commission recommends the concealment strategy devised by Crown Castle and staff be considered an acceptable concealment strategy for the containment of the units, but that the quantity and specific locations of the WCF installations have a negative visual impact;
- c. Design Guidelines and General Plan. The proposed designs are not consistent with the Piedmont General Plan policies that require the preservation of the residential character of the community and are not consistent with Piedmont Design Guidelines with respect to preserving historical character and the adverse visual impact that the quantity of wireless communication facilities

installations would have on the character of the community as a whole. In addition, the proposed designs are not consistent with Design Guideline 3.02, Relation to the Public Realm, in that improvements which about the public realm should reinforce the City's efforts to make these spaces attractive and visually cohesive. Because the proposed sites are located within a small area, they collectively do not make the area attractive or visually cohesive. Furthermore, the installations are not consistent with City Code section 17.46.040.C in that, although they will not be located on residential properties, they will be located within inches of residential properties. The applicant has given little thought to the proposed locations as opposed to other locations which would have fewer impacts on individual residences.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission resolves that:

SECTION 1. The above recitals are correct and are material to this Resolution and are incorporated into this Resolution as findings of the Planning Commission.

SECTION 2. **Recommendation.** Based on the findings and facts set forth heretofore, the staff report and evidence presented at the public hearing, the Planning Commission recommends the design and concealment strategy of the proposed equipment but does not recommend that the City Council approve the applications for wireless communication facilities permits for proposed facilities sited at or near 201 Hillside Avenue, 237 El Cerrito Avenue, 410 Hillside Court, 338 Magnolia Avenue, 108 MacKinnon Place, 100 Palm Drive, 185 Wildwood Avenue, and 523 Boulevard Way (sites identified in the application materials as PHS10, PHS11, PHS12, PHS13, PHS15, PHS16, PHS17, and PHS18, respectively) in accordance with the plans and specifications on file with the City.

Moved by Batra, Seconded by Alessio
Ayes: Alessio, Batra, Levine, Ramsey, Strout
Noes: None
Recused: None
Absent: Duransoy

ADJOURNMENT

There being no further business, Chairman Levine adjourned the meeting at 9:16 p.m.