

PIEDMONT CITY COUNCIL

Special and Regular Meeting Minutes for Monday, November 18, 2019

A Special and Regular Session of the Piedmont City Council was held November 18, 2019, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54957(b), the agenda for this meeting was posted for public inspection on November 14, 2019.

CALL TO ORDER The Council met in Closed Session for Conference with Legal Counsel – Existing Litigation (Govt. Code 54956.9), Name of Case: Crown Castle NG West, LLC v. City of Piedmont. Following the 5:30 p.m. Closed Session, Mayor Bob McBain called the meeting to order at 6:30 p.m. with the Pledge of Allegiance.

ROLL CALL Present: Mayor Bob McBain, Vice Mayor Teddy Gray King, and Councilmembers Jennifer Cavenaugh, Tim Rood, and Betsy Smegal Andersen

Staff: City Administrator Sara Lillevand, City Attorney Michelle Marchetta Kenyon, Special Counsel Harriet Steiner, Planning & Building Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, Finance Director Michael Szczech, and Assistant City Administrator / City Clerk John Tulloch

CONSENT CALENDAR The Consent Calendar consisted of the following items:

Council Meeting Minutes Approval of Council Meeting Minutes for 10/21/19

Annual Turkey Trot Race Approval of a Street Use Permit for the Annual Turkey Trot Race Sponsored by PTT Thanksgiving Race, Inc. (1000)

Resolution No. 72-19
RESOLVED, that the City Council approves the consent calendar.
Moved by Rood, Seconded by King
Ayes: Andersen, Cavenaugh, King, McBain, Rood
Noes: None
Absent: None

PUBLIC FORUM Stuart Schneck requested the City enforce the requirements for the AT&T and T-Mobile antennas located on Estates Drive.

Carole Musgrave requested installation of additional signage at the intersection of El Cerrito and Oakland Avenues to improve the safety of pedestrians crossing the streets.

SPECIAL AND REGULAR AGENDA The Council considered the following items of regular business:

Wireless Communication Facilities Permits City Administrator Sara Lillevand acknowledged residents' frustration, anger, and confusion regarding Crown Castle's applications for wireless communication facilities. She emphasized that both the state of California and the United States government have defined wireless telecommunications companies and infrastructure providers as utilities. Defining them thusly provides these companies with the right to access the public right-of-way for their facilities. In addition, all cities are required to treat public utilities, regardless of the service they provide, equally. As such, local government has very little authority to regulate wireless facilities in the public right-of-way.

Ms. Lillevand then related the history of Crown Castle's applications, from their inception in 2016 through to the present day. She discussed the law suit filed by Crown Castle regarding the City's denial and approval of various sites included in the initial application, as well as the settlement agreement between Crown Castle and the City to end the suit. She advised that the applications before the Council tonight are Crown Castle's resubmitted applications, as required by the settlement. The City Administrator explained that Council approval of the applications tonight would terminate the law suit, but denial of the applications would result in the suit going forward.

Ms. Lillevand noted that the settlement agreement included improved designs for the proposed wireless communication facilities over what was originally proposed. She noted that the Planning Commission had considered the updated applications and recommended approval of the designs and denial of the locations and the density of the proposed sites. She noted, however, the City has limited control over the location of telecommunication facilities in the public right-of-way, and the design cannot be separated from the locations under the terms of the settlement agreement. City Administrator Lillevand added that the Planning Commission raised several issues that resulted in additional conditions of approval.

The City Administrator reported that the City of Piedmont has joined a coalition of cities in a lawsuit contesting federal regulations, but the court refused to stay the regulations. She indicated City staff and the City Attorney's office have determined that the applications are in substantial conformance with the settlement agreement and have recommended the City Council approve the permit applications.

Planning & Building Director Kevin Jackson detailed the legal framework surrounding wireless communication facility applications in the public right of way, noting that local jurisdictions are prohibited from banning small cell wireless communication facilities in the public right-of-way. He further noted that local jurisdictions are prohibited from denying applications based on emissions, so long as the applicant submits a statement that their proposed facility meets federal standards. He then discussed the issue of coverage versus capacity, noting that a recent court decision held if a wireless service provider submits an application for wireless facilities for the stated purpose of meeting service needs, that purpose alone is sufficient to demonstrate gaps in coverage and/or capacity.

Turning to the settlement agreement, Mr. Jackson indicated that the City's negotiating team focused its efforts on gaining the best facility design possible, given the legal constraints. He noted the settlement agreement requires Crown Castle to utilize smaller radios, which necessitated the increased number of sites over the original application. Mr. Jackson advised that the settlement agreement provides for Crown Castle to file applications for 18 small cell wireless communication facilities, and the City Council is required to review the applications for conformance with the settlement agreement and the standards set forth in the City Code. He noted that PHS 09, located at the Wildwood Avenue entrance to Piedmont Park, is not part of the lawsuit or the settlement agreement and will be considered separately. Thus, seventeen applications are before the City Council rather than eighteen applications as stated in the settlement agreement. He stated staff recommends modification of the condition of approval for defense of legal challenges.

Senior Planner Pierce Macdonald-Powell provided a photograph and an overview of the all of the proposed applications, which generally surround Piedmont Park and Piedmont Unified School District property generally. She indicated that none of the facilities requires a large equipment vault beneath the sidewalk, utilizes a ventilation fan, or impacts trees to the degree of the facilities proposed in 2017. Ms. Macdonald-Powell reported that based on staff's research, the designs are some of the smallest, best concealed, and quietest small cell wireless facilities in the Bay Area.

Special Counsel Harriet Steiner explained the City's ability to regulate the aesthetics of small cell wireless facilities and to take regulatory actions. She clarified that the City must take action on the applications within specified time periods or the applications will be deemed denied under the settlement agreement and approved under the federal shot clock.

At this time, Vice Mayor King, Councilmember Andersen, and City Administrator Lillevand announced that they live within 500 feet of several of the proposed sites; recused themselves from consideration of sites PHS 07 (355 Jerome Ave.), PHS 11 (237 El Cerrito Ave.), PHS 13 (338 Magnolia Ave.), and PHS 15 (108 MacKinnon Pl.); and left the Council Chambers.

Ms. Macdonald-Powell then gave a detailed description of these four proposed sites, indicating that they comply with the standards contained in the Piedmont City Code. She noted that the applications for sites PHS 11, PHS 13, and PHS 15 require exceptions to the height limit in order to comply with California Public Utilities Commission (CPUC) safety requirements regarding power poles, which is an allowed exception under the City Code. She noted that staff proposes conditions of approval specifically for site PHS 07 regarding concealment and site PHS 15 regarding pole location. She advised that staff responded to community concerns by recommending modifications to conditions of approval regarding ongoing maintenance of facilities. Ms. Macdonald-Powell advised that staff has determined the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(d) of the CEQA Guidelines.

Mayor McBain opened the Public Hearing for sites PHS 07, PHS 11, PHS 13, and PHS 15.

Public Testimony was received from:

Anian Tunney, Stephen Kozinchik, Ernest Reddick, Dale Humphries, Joe Hayashi, and Garrett Schwartz opposed the projects based on health concerns, likely reductions in property value, the increased number of sites, the lack of current standards for RF emissions, excellent wireless coverage without the additional sites; and the incorrect address for site PHS 15 in the notice; and inaccurate information in the RF Emissions Compliance Report.

Michael Shonafeldt, legal counsel for Crown Castle, reported Crown Castle is a public utility, and antennas are an integral component of local telecommunications networks. He added that smaller radios do not extend coverage as far as larger radios; therefore, more sites are needed to provide the same coverage. He discussed the possible, future colocation of additional facilities at the proposed locations.

Jim McLernon, Crown Castle RF Manager, explained the need for multiple small cell facilities. He noted that the applications comply with the radio frequency standards set by the Federal Communications Commission (FCC).

Mayor McBain closed the Public Hearing.

Councilmember Cavanaugh recognized staff's work in negotiating the settlement agreement and reviewing the applications. She stated Councilmembers have read residents' comments and understand and appreciate resident concerns. Councilmember Cavanaugh felt the settlement agreement has achieved significant improvements in the design of the wireless facilities.

Resolution No. 73-19

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 355 Jerome Avenue, 237 El Cerrito Avenue, 338 Magnolia Avenue, and 108 MacKinnon Place, sites identified in the application materials as PHS07, PHS11, PHS13, and PHS15, 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 designs includes a single canister antenna atop utility poles or strand-mounted antenna, cables within covered risers on the sides of the utility poles, and equipment in enclosures 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, pursuant to Piedmont City Code sections 17.46.080 A and B, the Planning Commission reviewed the application for a WCF permit for site PHS07 at 355 Jerome Avenue at a duly noticed public hearing on June 12, 2017, and the Planning Commission reviewed the applications for WCF permits for sites PHS11, PHS13, and PHS15 at 237 El Cerrito Avenue, 338 Magnolia Avenue and 108 MacKinnon Place, at a duly noticed public hearing on October 29, 2019, making recommendations to the City Council, which is the decision-making body because these facilities are proposed in Zone A and located within the City-owned public right-of-way; 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 applications state 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 PHS11, PHS13 and PHS15 and exceptions to the City's minimum setback to the front of curb 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 application, the City Council 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 City Council 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 sites are 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 existing utility pole locations 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 antennas for sites PHS11, PHS13, and PHS15 will be 36 inches tall and the facilities at sites PHS11 and PHS13 are proposed at a height of 57 feet 2.5 inches, as measured to adjacent grade, and the facility at PHS15 at 108 MacKinnon Place is proposed at a height of 39 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 sites PHS11, PHS13, and PHS15 and has submitted information stating that exceptions are warranted on the basis of CPUC safety regulations. Site PHS07 at 355 Jerome Avenue is 21 feet as measured to adjacent grade. As conditioned, the antennas for sites PHS11, PHS13, and PHS15 will be concealed in a radome shroud. As conditioned, plans submitted for construction permits shall show

that the antenna for Site PHS07 will be concealed in a light-weight adhesive wrap. Radio equipment will be located in enclosures mounted to the sides of the utility poles. Cables will be concealed within 2-inch-wide risers mounted to the side of the utility poles or sleeve running from the utility pole to the strand-mounted antenna; 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 2-inch-wide risers attached to the sides of the poles; the pole-mounted enclosures provide the concealment for the communication equipment; the antenna shall be no taller than 36 inches; a 14-inch-diameter radome shroud or light-weight adhesive wrap encase the antennas; 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 a 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 as 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 which was 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 designs of PHS07, PHS11, PHS13 and PHS15 are 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 applications propose 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 applications propose radios in enclosures and cables in risers that hug the pole in a manner that avoids an adverse impact on views. Pole top antennas are proposed at sites PHS11, PHS13, and PHS15 instead of antennas attached to the side of the utility pole in order to mitigate the overall bulk of the equipment. At sites PHS11, PHS13, and PHS15 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. Site PHS07 includes a small strand-mounted antenna with a stabilizing arm with a 2-foot-tall antenna to reduce visual impacts; 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 that produces 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 the proposed facilities include concealment and screening devices: a radome to shroud the antenna, two pole-mounted enclosures for the radios, and 2-inch-wide 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 2-inch-wide 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 collocations at these sites 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 City Council 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 City Council.

SECTION 2. Based on the findings and facts set forth heretofore, the staff report and evidence presented at the public hearing, the City Council approves the applications for wireless communication facilities permits for proposed facilities sited at or near 355 Jerome Avenue (PHS07), 237 El Cerrito Avenue (PHS11), 338 Magnolia Avenue (PHS13), and 108 MacKinnon Place (PHS15) 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. **Utility pole location at PHS13, 338 Magnolia Avenue.** The Applicant shall reuse the existing utility pole location exactly for the installation of the new utility pole to reduce impacts to adjacent trees per the Applicant’s arborist recommendations.
3. **Design, heights of facilities and diameter of radome shroud.** The antennas shall have a maximum height of 36 inches at sites PHS11, PHS13, and PHS15, and the antennas shall be shown on plans submitted for construction permits to have a maximum 14-inch diameter dimension shroud. Cables shall be concealed in two 2-inch-wide risers mounted directly to the utility pole. The antenna for PHS07 shall have a maximum height of 2 feet and the maximum height of site PHS07 shall be 21 feet, as measured to lowest adjacent grade. The antenna at PHS07 shall be concealed in a light-weight adhesive wrap and the cables shall be concealed in a 2-inch-wide flexible conduit leading from the utility pole to the antenna. The maximum height, measured from lowest adjacent grade, of sites PHS11 and PHS13 shall be 57 feet 2.5 inches. The maximum height of PHS15 shall be 39 feet 2.5 inches tall, as measured to lowest adjacent grade. The pole-mounted radio enclosures used at these facilities 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. Shrouds, enclosures, and other equipment shall be painted a dark, non-reflective color to match the color of the structure on which it is mounted.

4. **Survey.** Prior to issuance of permits for construction, the Applicant shall provide a survey prepared by a licensed land surveyor of the property lines at 108 Mackinnon Place and 116 Arbor Drive adjacent to the utility pole at site PHS15. All installations must be within the public right-of-way.
5. **Sidewalk widths.** No wireless communication facility or utility pole shall obstruct the sidewalk or reduce the existing width of the sidewalk adjacent to the utility pole. No wireless communication facility or utility pole shall restrict the existing separation between a utility pole and a fire hydrant. If exceptions to the required setback to the front of curb are necessary to maintain existing sidewalk width, then the Applicant shall locate the utility pole closer to the front of curb, but no closer than 6 inches. Crown Castle is not authorized by this approval to reconfigure City sidewalks.
6. **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.
7. **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 facilities, the Applicant shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.
8. **Defense of legal challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, 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, Applicant shall pay for all costs of City's own selected legal counsel(s). For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.

9. **Future modifications.** The Applicant shall give the City of Piedmont Planning & Building Department 30-days advance notice before the Applicant or Applicant's agent changes, adds, reconfigures, or removes, equipment. Future modifications of the approved installations that extend beyond the approved project site or that remove or subvert the concealment designs of the approved antennas and equipment, including the pole-mounted enclosures containing the radio units, the perimeter of the radome shrouds concealing the antenna(s), the light-weight adhesive wrap enclosing the antenna at PHS07, 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.

10. **Construction Management Plan.** Prior to issuance of City required construction permits for the approved projects, 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, access to neighboring properties, 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 projects, including the construction route and the days and hours permitted for 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.
11. **Maintenance of facilities.** Applicant shall obtain a permit from the Department of Public Works a minimum of 48 hours in advance for each period of 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. The Applicant's Public Works permit applications shall include an emergency vehicle access plan showing how access for Fire Department and Police Department vehicles will be maintained during maintenance visits, including contact person's name and phone number, supervisor's name and phone number, and type of equipment to be used.
12. **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.
13. **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.
14. **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 poles 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 a 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.
15. **Concealment design and project site.** As provided in the proposed plans, each antenna radome shroud or light-weight adhesive wrap 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.

16. **Term.** The approval of the wireless communication facilities permit is valid for a term of 10 years. At the end of the term, the Applicant shall remove its equipment.
17. **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.
18. **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.
19. **Arborist's Report and Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report and Certified Tree Preservation Plan that includes tree preservation measures to preserve trees within 25 feet of construction. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees that are intended to be retained. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size. Before the Final Inspection, the Arborist shall file a report to the City certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction. Applicant shall conduct utility pole installation so that clearance pruning does not remove more than 25% of tree canopy.
20. **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.** Prior to issuance of a construction permit, the owner or operator of a wireless communication facility must submit basic contact and site information to the city, including name and contact information for the authorizing representative of the Joint Pole Authority or PG&E, 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 7.5 inches by 7.5 inches 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. The Applicant shall provide a post-construction report and an annual report with the following information: equipment model and manufacturer, frequency bandwidths, effective radiated power, and emission levels measured to nearest building(s) with a comparison to FCC limits.
- 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.

21. **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, including the creation of a utility undergrounding district, 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.

22. **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.
23. **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 4. 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 Rood, Seconded by Cavanaugh

Ayes: Cavanaugh, McBain, Rood

Noes: None

Recused: Andersen, King

(1127)

The Council recessed at 8:20 p.m. and reconvened at 8:26 p.m.

Vice Mayor King, Councilmember Andersen, and City Administrator Lillevand returned to the Council Chambers and took their seats at the dais.

Ms. Macdonald-Powell then gave a detailed description of proposed sites PHS 01 (340-370 Highland Ave.), PHS 02 (150 Highland Ave.), PHS 03 (799 Magnolia Ave.), PHS 04 (740 Magnolia Ave.), PHS 05 (303 Hillside Ave.), PHS 06 (428 El Cerrito Ave.), PHS 08 (1166 Winsor Ave.), PHS 10 (201 Hillside Ave.), PHS 12 (410 Hillside Ct.), PHS 14 (96 Fairview Ave.), PHS 16 (100 Palm Dr.), PHS 17 (185 Wildwood Ave.), and PHS 18 (523 Boulevard Way), indicating that they comply with the standards contained in the Piedmont City Code. She noted that the applications for sites PHS 05, PHS 06, PHS 08, PHS 10, PHS 12, PHS 14, PHS 16, PHS 17, and PHS 18 require exceptions to

the height limit in order to comply with CPUC safety requirements or exceptions to the setback to the front of curb in order to comply with ADA sidewalk widths, which are allowed exceptions under the City Code. Ms. Macdonald-Powell noted staff's proposed modifications to the conditions of approval for ongoing maintenance and defense of legal challenges. In addition, staff proposes a condition of approval specifically for site PHS 12 regarding pole location. Finally, staff recommends the City Council approve the license agreement for the use of City-owned structures in the public right-of-way. Ms. Macdonald-Powell advised that staff has determined the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(d) of the CEQA Guidelines.

Mayor McBain opened the Public Hearing for sites PHS 01, PHS 02, PHS 03, PHS 04, PHS 05, PHS 06, PHS 08, PHS 10, PHS 12, PHS 14, PHS 16, PHS 17, and PHS 18.

Public Testimony was received from:

Jeanne Alvis, Alexi Mavrellis, Kris Kuhl, Eric Behrens, Sherk Chung, Garrett Schwartz, Karin Fetherston, Jonathan Labrum, Lisa Carnazzo, Bruce Mowat, Michael Costello, Gary Laymon, Darryl Lim, Nancy Lim, Joe Hayashi, Ernest Reddick, and Shary Nunan opposed the wireless facilities because they will diminish the charm, beauty, and character of Piedmont and will lead to the proliferation of wireless facilities in Piedmont. Speakers noted their opinion that RF emissions negatively affect health and that installation of these facilities will block the views from adjacent homes and decrease the value of adjacent homes. Speakers also noted their opinion that wireless coverage is more than adequate without these facilities. Speakers also discussed the proximity of the proposed sites to homes. Speakers also discussed the effect of RF emissions on those with electromagnetic sensitivity. Speakers stated that residents of Piedmont do not want wireless antennas.

Michael Shonafeldt, Crown Castle legal counsel, discussed the RF emissions, noting that the proposed facilities emissions are 0.03% of the maximum allowable exposure limit. In response to queries, Mr. Shonafeldt stated Crown Castle currently has no plans for additional projects in Piedmont.

Jim McLernon discussed the possibilities of colocation at the proposed sites.

Mayor McBain closed the Public Hearing.

The Council thanked residents for expressing their deeply held beliefs about the proposed wireless communication facilities, acknowledging the time and effort residents have put in to this issue. Councilmembers noted that the City did not seek these applications and were bound by the law as to how they are handled. The Council held a lengthy discussion of the proposed wireless sites, examining the feasibility of taking no action and pursuing litigation; requirements contained in the conditions of approval; use of an independent third party to perform or verify ongoing monitoring; emergency access during maintenance of the wireless facilities; and the reasonableness and acceptability of the design. Councilmembers agreed that the current design is far superior than previous designs.

Resolution No. 74-19

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 340-370 Highland Avenue, 150 Highland Avenue, and 799 Magnolia Avenue, sites identified in the application materials as PHS01, PHS02, and PHS03, 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 designs include a single canister antenna atop City streetlights, cables within streetlight poles, and equipment in enclosures mounted to the side of the streetlight pole at site PHS02 or within ground-mounted enclosures at sites PHS01 and PHS03, the construction of which requires a WCF permit; and

WHEREAS, pursuant to Piedmont City Code sections 17.46.080 A and B, the Planning Commission reviewed the application for a WCF permit for site PHS01, at or near 340-370 Highland Avenue, site PHS02 near 150 Highland Avenue, and site PHS03 near 799 Magnolia Avenue at a duly noticed public hearing on June 12, 2017, making recommendations to the City Council, which is the decision-making body because these facilities are proposed in Zones A and B and located within the City-owned public right-of-way; 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, based upon the evidence and after reviewing the applications, plans and any and all testimony and documentation submitted in connection with such application, the City Council 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 applications, plans and any and all testimony and documentation submitted in connection with such application, the City Council 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 sites are in Zones A and B 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 streetlight pole locations 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 antennas for sites PHS01, PHS02, and PHS03 will be 24 inches tall and are proposed at a height of 33 feet 7 inches, 33 feet 10 inches, and 33 feet 3 inches, as measured to adjacent grade, respectively. As conditioned, the antennas for sites PHS01, PHS02, and PHS03 will be concealed in 10-inch diameter radome shrouds. Radio equipment will be located in an enclosure mounted to the sides of the streetlight pole, sandwiched between street signs, or in ground-mounted cabinets inside trash receptacles. Cables will be concealed within the streetlight 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 streetlight poles; the street signs sandwiching the pole-mounted enclosure provide the concealment for the communication equipment; the cabinets inside trash receptacles provide concealment for the communication equipment, the antennas shall be no taller than 24 inches; a 10-inch diameter radome shrouds encase the antennas; 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 a 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 as 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 which was 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 designs of PHS01, PHS02, and PHS03 are consistent with the Piedmont General Plan in that the scale and mass of the communication equipment are appropriate for the streetlights and streetscape in the Zone A and B 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 applications propose relatively small radio enclosures and antennas that minimize their visibility. In addition, they are attached to the streetlights in a manner consistent with City streetlight design and, in the case of the antenna, are meant to be seen as an extension of the streetlight itself; and
 - The facilities meet Design Guideline 3.03.01.1, "Significant Views," in that the applications propose radios in enclosures and cables inside the streetlight pole in a manner that avoids an adverse impact on views. Antennas are proposed atop streetlights at sites PHS01, PHS02, and PHS03 in order to mitigate the overall bulk of the equipment. ; 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

- streetlights. The application proposes no equipment that produces 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 the proposed facilities include concealment and screening devices: a radome to shroud the antenna, equipment cabinet concealed between street signs, equipment cabinets concealed inside trash receptacles, and cables concealed inside the streetlight poles; 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 inside the streetlight poles 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 streetlights will be painted to closely match the color of the pole; and
- e. Future Collocation. Although future collocations at these sites 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 City Council 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 City Council.

SECTION 2. Based on the findings and facts set forth heretofore, the staff report and evidence presented at the public hearings, the City Council approves the applications for wireless communication facilities permits for proposed facilities sited at or near 340-370 Highland Avenue (site PHS01), 150 Highland Avenue (site PHS02) and 799 Magnolia Avenue (site PHS03) 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 antennas shall have a maximum height of 24 inches, and shall have a radome no wider than 10 inches in diameter. The maximum height of site PHS01 shall be 33 feet 7 inches, as measured to lowest adjacent grade. The maximum height, measured from lowest adjacent grade, of sites PHS02 shall be 33 feet 10 inches. The maximum height of PHS03 shall be 33 feet 3 inches tall, as measured to lowest adjacent grade. Cables shall be concealed inside streetlight poles and not visible on the exterior of the streetlight. Any proposed hand-hole vaults shall have slip resistant lids to the satisfaction of the City Engineer. No stand-off brackets shall be used for

pole-mounted equipment cabinets. Banner mounting hardware shall be replaced on all streetlights. Shrouds, enclosures, and equipment shall be painted a dark, non-reflective color to match the structure it is mounted on to the satisfaction of the City Engineer.

3. **Sidewalk widths.** No wireless communication facility or streetlight pole shall obstruct the sidewalk or reduce the existing width of the sidewalk adjacent to the streetlight pole. If exceptions to the required setback to the front of curb are necessary to maintain existing sidewalk width, then the Applicant shall locate the streetlight pole closer to the front of curb, but no closer than 6 inches. Crown Castle is not authorized by this approval to reconfigure City sidewalks.
4. **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. Applicant shall replace banner mounting hardware.
5. **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 facilities, the Applicant shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.
6. **Defense of legal challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, 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, Applicant shall pay for all costs of City's own selected legal counsel(s). For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.
7. **Future modifications.** The Applicant shall give the City of Piedmont Planning & Building Department 30-days advance notice before the Applicant or Applicant's agent changes, adds, reconfigures, or removes, equipment. Future modifications of the approved installations that extend beyond the approved project site or that remove or subvert the concealment designs of the approved antennas and equipment, including the pole-

mounted enclosures containing the radio units, the perimeter of the radome shrouds concealing the antenna(s), the light-weight adhesive wrap enclosing the antenna at PHS07, 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.

8. **Construction Management Plan.** Prior to issuance of City required construction permits for the approved projects, 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, access to neighboring properties, 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 projects, including the construction route and the days and hours permitted for 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.

9. **Maintenance of facilities.** Applicant shall obtain a permit from the Department of Public Works a minimum of 48 hours in advance for each period of 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. The Applicant's Public Works permit applications shall include an emergency vehicle access plan showing how access for Fire Department and Police Department vehicles will be maintained during maintenance visits, including contact person's name and phone number, supervisor's name and phone number, and type of equipment to be used.
10. **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.
11. **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.
12. **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 streetlights is less than or equal to the height measured from grade adjacent to the streetlights as shown on the approved plans, subject to the conditions of approval. If a 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.
13. **Concealment design and project site.** As provided in the proposed plans, each antenna radome shroud or light-weight adhesive wrap 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.
14. **Term.** The approval of the wireless communication facilities permit is valid for a term of 10 years. At the end of the term, the Applicant shall remove its equipment.

15. **Cables and cabling.** The cables to the antennas atop the streetlights shall be enclosed inside the streetlight poles. No cabling shall be visible on the exterior of the streetlight on plans filed for City-required construction permits or evident on each installation after completion of construction.
16. **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.
17. **Arborist's Report and Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report and Certified Tree Preservation Plan that includes tree preservation measures to preserve trees within 25 feet of construction. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees that are intended to be retained. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size. Before the Final Inspection, the Arborist shall file a report to the City certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction. Applicant shall conduct utility pole installation so that clearance pruning does not remove more than 25% of tree canopy.
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 - 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. The Applicant shall provide a post-construction and an annual report with the following information: equipment model and manufacturer, frequency bandwidths, effective radiated power, and emission levels measured to nearest building(s) with a comparison to FCC limits.
- 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.

19. **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.

20. **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.

21. **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 4. 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 Rood, Seconded by King

Ayes: Andersen, Cavanaugh, King, McBain, Rood

Noes: None

Absent: None

(1127)

Resolution No. 75-19

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 740 Magnolia Avenue, 303 Hillside Avenue, 428 El Cerrito Avenue, 1166 Winsor Avenue, 201 Hillside Avenue, 410 Hillside Court, 96 Fairview Avenue, 100 Palm Drive, 185 Wildwood Avenue, and 523 Boulevard Way, sites identified in the application materials as PHS04, PHS05, PHS06, PHS08, PHS10, PHS12, PHS14, 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 designs include a single canister antenna atop utility poles, cables within covered risers on the sides of the utility poles, and equipment in enclosures 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, pursuant to Piedmont City Code sections 17.46.080 A and B, the Planning Commission reviewed the application for a WCF permit for site PHS04 (740 Magnolia Avenue), PHS05 (303 Hillside Avenue), PHS06 (428 El Cerrito Avenue), and PHS08 (1166 Winsor Avenue/1159 Winsor Avenue), at a duly noticed public hearing on June 12, 2017, and the Planning Commission reviewed the applications for WCF permits for sites PHS10 (201 Hillside Avenue), PHS12 (410 Hillside Court), PHS14 (96 Fairview Avenue), PHS16 (100 Palm Drive), PHS17 (185 Wildwood Avenue), and PHS18 (523 Boulevard Way), at a duly noticed public hearing on October 29, 2019, making recommendations to the City Council, which is the decision-making body

because these facilities are proposed in Zones A and B and located within the City-owned public right-of-way; 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 PHS05, PHS06, PHS08, PHS10, PHS12, PHS14, PHS17, and PHS18 and exceptions to the City's minimum setback to the front of curb 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 application, the City Council 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 City Council 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 sites are in Zones A and B 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 existing utility pole locations 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 antennas will be 36 inches tall. The facility at PHS17 will be 39 feet 2.5 inches tall. The facilities at PHS04 and PHS08 are proposed at a height of 43 feet 8.5 inches tall. Sites PHS05, PHS12, PHS16, and PHS18 are proposed at a height of 52 feet 8.5 inches. The facilities at sites PHS06, PHS10, and PHS14 will be 57 feet 2.5 inches tall. 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 all of the sites except PHS04, which is located in Zone B, and has submitted information stating that exceptions are warranted on the basis of CPUC safety regulations. As conditioned, the antennas for all of the sites will be concealed in a radome shroud. Radio equipment will be located in enclosures mounted to the sides of the utility poles. Cables will be concealed within 2-inch-wide 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 two 2-inch-wide risers attached to the sides of the poles; the pole-mounted enclosures provide the concealment for the communication equipment; the antennas shall be no taller than 36 inches; a 14-inch-diameter radome shroud encases the antennas; 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 a 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 as 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 which was 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 designs of PHS04, PHS05, PHS06, PHS08, PHS10, PHS12, PHS14, PHS16, PHS17, and PHS18 are 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 and B areas, 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 applications propose 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 applications propose radios in enclosures and cables in risers that hug the pole in a manner that avoids an adverse impact on views.

- Pole top antennas are proposed at sites PHS04, PHS05, PHS06, PHS08, PHS10, PHS12, PHS14, PHS16, PHS17, and PHS18 instead of antennas attached to the side of the utility pole in order to mitigate the overall bulk of the equipment. At sites PHS05, PHS06, PHS08, PHS10, PHS12, PHS14, PHS16, PHS17, and PHS18 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 that produces 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 the proposed facilities include concealment and screening devices: a radome to shroud the antenna, two pole-mounted enclosures for the radios, and two 2-inch-wide 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 2-inch-wide 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 collocations at these sites 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 City Council 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 City Council.

SECTION 2. Based on the findings and facts set forth heretofore, the staff report and evidence presented at the public hearing, the City Council approves the applications for wireless communication facilities permits for proposed facilities sited at or near 740 Magnolia Avenue, 303 Hillside Avenue, 428 El Cerrito Avenue, 1166 Winsor Avenue, 201 Hillside Avenue, 410 Hillside Court, 96 Fairview Avenue, 100 Palm Drive, 185 Wildwood Avenue, and 523 Boulevard Way, sites identified in the application materials as PHS04, PHS05, PHS06, PHS08, PHS10, PHS12, PHS14, PHS16, PHS17, and PHS18, respectively, 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 antennas shall have a maximum height of 36 inches at sites PHS04, PHS05, PHS06, PHS08, PHS10, PHS12, PHS14, PHS16, PHS17, and PHS18. The radome shroud on the antenna shall be shown on plans submitted for construction permits to have a maximum 14-inch diameter dimension. The maximum height of site PHS17 shall be 39 feet 2.5 inches, the maximum height of sites PHS04 and PHS08 shall be 43 feet 8.5 inches, the maximum height of sites PHS05, PHS12, PHS16, and PHS18 shall be 52 feet 8.5 inches, and the maximum height of sites PHS06, PHS10, and PHS14 shall be 57 feet 2.5 inches, as measured to lowest adjacent grade. Cables shall be concealed in two 2-inch-wide risers mounted directly to the pole. The pole-mounted radio enclosures used at these facilities 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. Shrouds, enclosures, risers, and equipment shall be painted a dark, non-reflective color to match the structure on which the equipment is mounted to the satisfaction of the City Engineer.
3. **Survey.** Prior to issuance of permits for construction, the Applicant shall provide a survey prepared by a licensed land surveyor of the property lines at 410 Hillside Court adjacent to the utility pole at site PHS12. All wireless communication facility equipment must be in the public right-of-way.
4. **Sidewalk widths.** No wireless communication facility or utility pole shall obstruct the sidewalk or reduce the existing width of the sidewalk adjacent to the utility pole. No wireless communication facility or utility pole shall restrict the existing separation between a utility pole and a fire hydrant. If exceptions to the required setback to the front of curb are necessary to maintain existing sidewalk width, then the Applicant shall locate the utility pole closer to the front of curb, but no closer than 6 inches. Crown Castle is not authorized by this approval to reconfigure City sidewalks.
5. **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.
6. **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 facilities, the Applicant shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

7. **Defense of legal challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, 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, Applicant shall pay for all costs of City's own selected legal counsel(s). For this purpose, "City" includes the City and its elected and appointed officials, agents, officers, employees, consultants, and volunteers.
8. **Future modifications.** The Applicant shall give the City of Piedmont Planning & Building Department 30-days advance notice before the Applicant or Applicant's agent changes, adds, reconfigures, or removes, equipment. Future modifications of the approved installations that extend beyond the approved project site or that remove or subvert the concealment designs of the approved antennas and equipment, including the pole-mounted enclosures containing the radio units, the perimeter of the radome shrouds concealing the antenna(s), the light-weight adhesive wrap enclosing the antenna at PHS07, 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.
9. **Construction Management Plan.** Prior to issuance of City required construction permits for the approved projects, 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, access to neighboring properties, 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 projects, including the construction route and the days and hours permitted for 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.
10. **Maintenance of facilities.** Applicant shall obtain a permit from the Department of Public Works a minimum of 48 hours in advance for each period of 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. The Applicant's Public Works permit applications shall include an emergency vehicle access plan showing how access for Fire Department and Police Department vehicles will be maintained during maintenance visits, including contact person's name and phone number, supervisor's name and phone number, and type of equipment to be used.
 11. **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.
 12. **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.

13. **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 poles 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 a 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.
14. **Concealment design and project site.** As provided in the proposed plans, each antenna radome shroud or light-weight adhesive wrap 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.
15. **Term.** The approval of the wireless communication facilities permit is valid for a term of 10 years. At the end of the term, the Applicant shall remove its equipment.
16. **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.
17. **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.
18. **Arborist's Report and Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report and Certified Tree Preservation Plan that includes tree preservation measures to preserve trees within 25 feet of construction. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees that are intended to be retained. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be

shown on the final landscape plan. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size. Before the Final Inspection, the Arborist shall file a report to the City certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction. Applicant shall conduct utility pole installation so that clearance pruning does not remove more than 25% of tree canopy.

19. **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. Prior to issuance of permits for construction, the owner or operator of a wireless communication facility must submit basic contact and site information to the city, including name and contact information for the authorizing representative of the Joint Pole Authority or PG&E, 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 7.5 inches by 7.5 inches 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. The Applicant shall provide a post-construction report and an annual report with the following information: equipment model and manufacturer, frequency bandwidths, effective radiated power, and emission levels measured to nearest building(s) with a comparison to FCC limits.

- 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.
20. **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, including the creation of a utility undergrounding district, 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.
21. **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.
22. **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 4. 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 Rood, Seconded by King
Ayes: Andersen, Cavanaugh, King, McBain, Rood
Noes: None
Absent: None
(1127)

Resolution No. 76-19

RESOLVED, that the City Council approves a license agreement between the City of Piedmont and Crown Castle NG West, LLC for use of City-owned streetlight poles or standalone poles in the right-of-way.

Moved by Rood, Seconded by McBain
Ayes: Andersen, Cavanaugh, King, McBain, Rood
Noes: None
Absent: None
(0045, 1127)

**1st Reading of Ord. 746
N.S. – Municipal
Services Tax Renewal**

Ms. Lillevand reported the Municipal Services Special Tax expires on June 30, 2021 and recommended that the Council pass Ordinance 746 N.S., which would place its renewal in front of the voters in March 2020. She noted that the tax provides approximately eight percent of the City's General Fund budget and has been approved by voters every four years since the 1980s. She indicated that the tax is levied against all improved lots in the City with a rate based on the use and, in most cases, the size of the lot.

The City Administrator indicated that the language of the proposed ordinance is essentially identical to the existing Municipal Services Special Tax. She described the timeline necessary to place approval of the tax on the March 3, 2020 ballot.

There was no **Public Testimony** on the matter.

The Council discussed the history and structure of the tax, how tax revenues are used, and the impact to Piedmonters of not renewing the tax. The Council also discussed whether the four year expiration of the tax should be extended to a greater period of time, ultimately deciding to leave the existing language in place to allow the tax to serve as a report card on how the City is operating.

Councilmember Andersen proposed an amendment in the first section of Section 20B.2, changing the phrase "...including, but not limited to..." in the first sentence of that section to read, "...which may include, but are not limited to..." in an effort to clarify that the City can use the tax for any general purpose. City Attorney Michelle Marchetta Kenyon indicated that both the existing and proposed language would have the same legal effect. The Council deliberated on this proposal, ultimately agreeing to include the amended language in the ordinance, given that it was a non-substantive change.

Resolution No. 77-19

RESOLVED, that the City Council approves the 1st reading of Ordinance 746 N.S. – Municipal Services Special Tax Renewal, as amended.

Moved by Cavanaugh, Seconded by Rood
Ayes: Andersen, Cavanaugh, King, McBain, Rood
Noes: None
Absent: None
(0435, 0705, 1030)

**REPORTS AND
ANNOUNCEMENTS**

Mayor McBain commended residents for attending the Piedmont Climate Challenge kickoff event, thanking staff and Piedmont Connect for their work in getting this program under way.

Councilmember Cavanaugh announced registration is open for the annual Turkey Trot and urged residents to participate. She noted that the City and Piedmont Unified School District are sponsoring a book drive to benefit the Piedmont High School Library and East Bay Children's Book Project.

Councilmember Rood requested an agenda item in December to discuss StopWaste's proposed foodware ordinance.

ADJOURNMENT

There being no further business, Mayor McBain adjourned the meeting at 10:59 p.m.