



**MEETING AGENDA**  
**TUALATIN PLANNING COMMISSION**

January 18, 2018; 6:30 p.m.  
JUANITA POHL CENTER  
8513 SW TUALATIN RD  
TUALATIN, OR 97062

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1. **CALL TO ORDER & ROLL CALL**  
Members: Bill Beers (Chair), Kenneth Ball, Alan Aplin, Angela DeMeo, Travis Stout, Mona St. Clair, Janelle Thompson  
Staff: Aquilla Hurd-Ravich, Planning Manager; Erin Engman, Associate Planner; Kelsey Lewis, Management Analyst II
2. **APPROVAL OF MINUTES**
  - A. Approval of December 7, 2017 TPC Minutes.
3. **COMMUNICATION FROM THE PUBLIC (NOT ON THE AGENDA)**  
Limited to 3 minutes
4. **ACTION ITEMS**
  - A. Elect a Chair and Vice Chair to Represent the Tualatin Planning Commission
  - B. Continued Public Hearing to consider a Variance to the Wireless Communication Facility (WCF) Separation Requirement for the POR Durham project in the Light Manufacturing (ML) Planning District at 10290 SW Tualatin Road (Tax Map/ Lot: 2S1 23B 0008000) (VAR17-0001)(RESO TDC609-17)
  - C. A Resolution for the Variance Request to the Wireless Communication Facility Separation Requirements
5. **COMMUNICATION FROM CITY STAFF**
  - A. Capital Improvement Plan Update
6. **FUTURE ACTION ITEMS**
7. **ANNOUNCEMENTS/PLANNING COMMISSION COMMUNICATION**
8. **ADJOURNMENT**





# STAFF REPORT

## CITY OF TUALATIN

**TO:** Tualatin Planning Commissioners

**FROM:** Lynette Sanford, Office Coordinator

**DATE:** 01/18/2018

**SUBJECT:** Approval of December 7, 2017 TPC Minutes.

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**ISSUE BEFORE TPC:**

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**Attachments:** [TPC Minutes 12.7.17](#)



# City of Tualatin

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UNOFFICIAL

TUALATIN PLANNING COMMISSION -

MINUTES OF December 7, 2017

**TPC MEMBERS PRESENT:**

Bill Beers  
Alan Aplin  
Janelle Thompson (Arrived after agenda item 2)  
Mona St. Clair  
Angela DeMeo  
Travis Stout (Arrived after agenda item 2)

**STAFF PRESENT**

Aquilla Hurd-Ravich  
Sean Brady  
Alice Cannon  
Lynette Sanford

**TPC MEMBER ABSENT:** Kenneth Ball

**GUESTS:** Alan Soren, E. Michael Connors.

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**1. CALL TO ORDER AND ROLL CALL:**

Bill Beers, Chair, called the meeting to order at 6:31 pm and reviewed the agenda. Roll call was taken.

**2. APPROVAL OF MINUTES:**

Mr. Beers asked for review and approval of the November 16, 2017 TPC minutes. MOTION by Aplin SECONDED by Beers to approve the minutes as written. MOTION PASSED 4-0.

**3. COMMUNICATION FROM THE PUBLIC (NOT ON THE AGENDA):**

None

**4. ACTION ITEMS:**

**A. Consideration of a Variance to the Wireless Communication Facility (WCF) Separation Requirement for the POR Durham project in the Light Manufacturing (ML) Planning District at 10290 SW Tualatin Rd (Tax Map/Lot 2S1 23B 000800) (VAR-17-0001) (RESO TDC 609-17).**

Ms. Hurd-Ravich stated the previous PowerPoint presentation from our last meeting can be revisited. Furthermore, the applicants are in attendance and available for questions.

These minutes are not verbatim. The meeting was recorded, and copies of the recording are retained for a period of one year from the date of the meeting and are available upon request.

Sean Brady, City Attorney, stated that the applicant has requested that the Planning Commission continue the December 7, 2017 public hearing to enable the applicant to provide additional information regarding compliance with TDC 33.025(1) (b). Mr. Beers asked Mr. Brady about the timeline. Mr. Brady stated that under state law, there is a 120-day rule and a Shot Clock rule that has a 150-day timeline. The applicant would like to extend both of these timelines.

*E. Michael Connors, Hathaway Larson LLP, 1331 NW Lovejoy St, Suite 950, Portland, OR*

Mr. Connors stated that the applicant has additional information regarding compliance with TDC 33.025(1) (b) that was part of the Architectural Review application but was not included in the Variance application. TDC 33.025(1) (b) is in reference to the 50% screening of the proposed monopole from the RL District or from a small lot subdivision in the RML district.

Mr. Connors believes the best way to handle this is to request an extension of the 120-day deadline under ORS 227.178 and the 150-day FCC Shot Clock deadline.

Ms. Thompson asked if the evidence will include photo Sims. Mr. Connors answered affirmatively – he wants to make sure the photo Sims are from various vantage points of the residential district.

Mr. Aplin noted that part B was not discussed at the first meeting. Ms. Hurd-Ravich noted that the narrative the applicant submitted was tailored to part A. The Commission members were in agreement that a more unified decision can be made with additional evidence.

MOTION by St Clair, SECONDED by Beers to grant an extension of the 120-day deadline and continue the hearing January 18, 2018. MOTION PASSED 6-0.

**5. COMMUNICATION FROM CITY STAFF:**

None.

**6. FUTURE ACTION ITEMS**

Ms. Hurd-Ravich stated that at our next meeting in January, there will be nominations for Chair and Vice Chair.

**7. ANNOUNCEMENTS/PLANNING COMMISSION COMMUNICATION**

None

**8. ADJOURNMENT**

MOTION by Beers to adjourn the meeting at 6:45 pm.

\_\_\_\_\_ Lynette Sanford, Office Coordinator



# STAFF REPORT

## CITY OF TUALATIN

**TO:** Tualatin Planning Commissioners

**FROM:** Lynette Sanford, Office Coordinator

**DATE:** 01/18/2018

**SUBJECT:** Elect a Chair and Vice Chair to Represent the Tualatin Planning Commission

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### **ISSUE BEFORE TPC:**

The Tualatin Planning Commission must elect a Chair and a Vice Chair from its membership at their first regular meeting of the calendar year.

### **EXECUTIVE SUMMARY:**

In compliance with the Tualatin Municipal code section **11-1-030 Organization of the Commission**, a Chair and Vice Chair must be elected by the members of TPC. Both positions are voting members of the Commission.

The current Chair Bill Beers has served in this position since 2017 and previously served as the Vice Chair since 2014. Kenneth Ball served as Vice Chair since 2017.

The Municipal Code does not place any limits on how many terms a committee member can serve as Chair or Vice Chair. These positions are not defined in the Municipal code; however, as a matter of practice the Chair's role is generally to convene and facilitate TPC meetings, attend Council meets to present TPC recommendations and meet with the Planning Manager or Community Development Director prior to the meeting to review the agenda. The Vice Chair assumes these duties in the absence of the Chair.

### **OUTCOMES OF DECISION:**

- Elect a new Chair and Vice Chair to serve for 2018
- Continue to comply with the Tualatin Municipal Code section 11-1-030 Organization fo the Commission

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**Attachments:** [TMC Chapter 11 Tualatin Planning Commission](#)

Published on *The City of Tualatin Oregon Official Website* (<https://www.tualatinoregon.gov>)

## Chapter 11-01: Tualatin Planning Commission

### Municipal Code:

Title 11: City Committees and Boards

### Tags:

Establishment of Committee Membership Organization Meeting Rules of Regulations of the Committee Expenditure of Funds Powers and Duties of Committee Coordination of Planning Review Annual Report of Committee Emergency Clause

### Details

### Sections:

**11-1-010 Establishment of Planning Commission.**

**11-1-020 Terms of Office and Membership.**

**11-1-030 Organization of Commission.**

**11-1-040 Meeting; Quorum; Rules and Regulations of the Commission.**

**11-1-050 Removal; Vacancy.**

**11-1-060 Expenditure of Funds.**

**11-1-070 Powers and Duties of Planning Commission.**

**11-1-080 Annual Report of Commission.**

### **11-1-010 Establishment of Planning Commission.**

The Tualatin Planning Commission is established and created. The Commission consists of seven members appointed by the Council. [Ord. 342-76, §1, 7/26/76; Ord. 1340-12 §1, 1/23/12; Ord. 1405-17, 11/13/17]

### **11-1-020 Terms of Office and Membership.**

(1) Each member appointed by the Council serves a three-year term. A member may be re-appointed to additional terms at the discretion of the Council.

(2) In appointing members to the Commission, the Council must consider the following:

(a) strive for geographic balance within the City;

(b) no more than three members may have the same occupation;

(c) no more than two members may be engaged principally in the buying, selling, or developing of real estate for profit as individuals, or be members of a partnership, or officers or employees of a corporation, that is engaged principally in the buying, selling, or developing of real estate for profit;

(d) no fewer than five members must reside in the City; and



(e) no more than two members may reside outside the City, provided the member must reside within the Urban Growth Boundary of the City.

(3) Commission members receive no compensation. [Ord. 342-76 §2, 7/26/76; Ord. 583-82, 8/23/82; Ord. 888-93 §1, 2, 3/22/93; Ord. 1017-99 §1&2, 4/26/99; Ord. 1147-03, Renumbered, 08/25/03; Ord. 1330-11 §1, 8/22/11; Ord. 1340-12 §2, 1/23/12; Ord. 1405-17, 11/13/17]

### **11-1-030 Organization of Commission.**

(1) At the first regular meeting of the Commission of each year, the Commission must elect a chairperson and vice chairperson. The chairperson and vice chairperson retain the right to vote on any matter before the Commission.

(2) The City Manager must provide a secretary who must keep an accurate record of all Commission proceedings. The Commission must file a re-port of all its proceedings with the City Recorder within 30 days of such proceedings. [Ord. 342-76 §3, 7/26/76; Ord. 1147-03, Renumbered, 08/25/2003; Ord. 1340-12 §3, 1/23/12; Ord. 1405-17, 11/13/17]

### **11-1-040 Meeting; Quorum; Rules and Regulations of the Commission.**

(1) The Commission will convene when necessary to discharge its duties; however, it must meet six times within every calendar year.

(2) A majority of members of the Commission constitute a quorum. A quorum of the Commission may transact any business or conduct any proceedings within the jurisdiction of the Commission.

(3) The Commission may adopt and amend rules and regulations establishing the procedure for the conduct of proceedings before it. Any such rules and regulations must be consistent with all ordinances, resolutions or laws of the City regulating the Commission. [Ord. 342-76 §4, 7/26/76; Ord. 446-78, 6/12/78; Ord. 583-82, 8/23/82; Ord. 1147-03, Renumbered, 08/25/03; Ord. 1330-11 §2, 8/22/11; Ord. 1340-12 §4, 1/23/12; Ord. 1405-17, 11/13/17]

### **11-1-050 Removal; Vacancy.**

(1) Each Commission member serves at the pleasure of the Council and may be removed by the Council for any reason.

(2) In addition to other grounds for removal, the Council may remove any Commission member who:

(a) has two or more unexcused absences from meetings, including regular and special work sessions, during a calendar year; or

(b) has five or more absences from meetings, including regular and special work sessions, during a calendar year.

For purposes of this section an unexcused absence is an absence where the member failed to contact the chairperson or secretary of the Commission at least 24 hours prior to a scheduled Commission meeting, unless good cause is shown.

(3) A vacancy on the Commission occurs in the following circumstances:

(a) the Council removes a member of the Commission;

(b) a member of the Commission resigns and the resignation is accepted by the Council; or

(c) a person ceases to qualify for the position to which they were appointed.

(4) Any vacancy on the Commission will be filled by the Council for the unexpired term of the member creating the vacancy. [Ord. 1405-17, 11/13/17]

### **11-1-060 Expenditure of Funds.**

The Commission has no authority to make any expenditure of funds on behalf of the City or to obligate the City for the payment of any funds without first obtaining approval for the expenditure from the City Council by resolution. [Ord. 342-76 §5, 7/26/76; Ord. 1147-03, Renumbered, 08/25/2003; Ord. 1340-12 §5, 1/23/12; Ord. 1405-17, 11/13/17]

### **11-1-070 Powers and Duties of Planning Commission.**

The Commission shall have the following powers and duties:

(1) Recommend and make suggestions to the Council regarding preparation and revision of plans for the growth, development, and beautification of areas both in-side the corporate limits of Tualatin and also within the City's urban growth boundary, such plans to incorporate elements and sub-elements including but not limited to the following:

(a) Land use, including Plan Text and Plan Map Amendments (PTA and PMA);

(b) Economic development:

(i) Housing;

(ii) Commercial and industrial;

(c) Public facilities:

(i) Transportation;

(ii) Water supply;

(iii) Sewerage;

(iv) Drainage;

(v) Parks and open space; and

(vi) Institutions; and

(d) Historic Resources.

(2) Recommend and make suggestions to the Council regarding preparation and revision of community development ordinances, including but not limited to the following:

(a) Tualatin Development Code;

(b) Tualatin Sign Ordinances; and

(c) Tree planting regulations.

(3) Study and propose in general such measures as may be advisable for promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the City and of the area within the City's Urban Growth Boundary.

(4) Serve as the City of Tualatin Commission for Citizen Involvement in accordance with the State of Oregon Land Conservation and Development Goal No. 1, with the following responsibilities.

(a) Evaluate the effectiveness of the citizen involvement program during March and October of each calendar year.

(b) Recommend and make suggestions to the City Council regarding revisions in the citizen involvement program, as the Commission deems appropriate.

(5) To exercise any and all powers, functions, and authority delegated to or conferred upon the Commission by the laws of Oregon, the Tualatin City Charter, this Chapter, the Tualatin Development Code, and any other ordinances of the City of Tualatin. [Ord. 342-76 §6, 7/26/76; Ord. 454-78 §, 8/28/78; Ord. 926-94, 6/13/94; Ord. 1147-03, Renumbered, 08/25/2003; Ord. 1340-12 §6, 1/23/12; Ord. 1405-17, 11/13/17]

## 11-1-080 Annual Report of Commission.

(1) Not later than April 1 of each year, the Commission must file its annual report of the activities of the Commission with the City Council.

(2) The annual report must contain the following:

(a) report of the Commission's activities during the preceding year;

(b) recommendations to the City Council relating to the planning process, comprehensive plan implementation measures within the City, and citizen involvement; and

(c) The report may include any other matters deemed appropriate by the Commission for recommendation and advice to the Council. [Ord. 342-76 §8, 7/26/76; Ord. 1147-03, Renumbered, 08/25/03; Ord. 1340-12 §8, 1/23/12; Ord. 1405-17, 11/13/17]

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### Links:

[1] <http://www.tualatinoregon.gov/municipalcode/chapter-10-01-telecommunications>

[2] <http://www.tualatinoregon.gov/municipalcode/municipal-code-table-contents>

[3] <http://www.tualatinoregon.gov/municipalcode>

[4] <http://www.tualatinoregon.gov/municipalcode/chapter-11-02-parks-advisory-committee>

[5] <http://www.tualatinoregon.gov/municipalcode/chapter-12-01-measure-37-real-property-compensation-claims>



# STAFF REPORT

## CITY OF TUALATIN

**TO:** Tualatin Planning Commissioners

**FROM:** Aquilla Hurd-Ravich, Planning Manager

**DATE:** 01/18/2018

**SUBJECT:** Continued Public Hearing to consider a Variance to the Wireless Communication Facility (WCF) Separation Requirement for the POR Durham project in the Light Manufacturing (ML) Planning District at 10290 SW Tualatin Road (Tax Map/ Lot: 2S1 23B 0008000) (VAR17-0001)(RESO TDC609-17)

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### **ISSUE BEFORE TPC:**

A public hearing began on November 16, 2017 to consider a request by Acom Consulting for a variance to the separation standards of wireless communication facilities. At the hearing a request was made to leave the record open. The Planning Commission granted this request and reconvened on December 7, 2017. At that hearing the applicant requested a continuance "to enable the Applicant to provide additional information regarding compliance with TDC 33.025(1)(b)."

The applicant has submitted a new narrative and photo simulations for Planning Commission consideration regarding the request for a variance of separation standards.

### **RECOMMENDATION:**

Staff recommends the Tualatin Planning Commission consider this staff report, analysis and findings and the applicants materials. Based on the applicant's narrative and photo simulations (included as exhibits to the analysis and findings) staff finds the application meets variance criterion 33.025(1)(b).

### **EXECUTIVE SUMMARY:**

Acom Consulting, Inc. proposed to construct a new unmanned wireless communication facility (WCF) on behalf of Lendlease (US) Telecom Holdings LLC - c/p PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. on the southwest corner of 10290 SW Tualatin Road. The proposed WCF would include a new 100-foot monopole support tower with antennas mounted at the top and opportunities for ancillary ground equipment including equipment cabinets, natural gas generator, cabling and ice bridge will be located below in a new 25' 48' secure fenced lease area surrounding the tower. It is anticipated that the proposed WCF will generate approximately 1-2 visits per month from a site technician.

The proposed WCF would be located within 1,500 feet of an existing WCF at 10699 SW Herman Road. Tualatin Development Code 73.470(9) requires that WCFs are separated by 1,500 feet:

"The minimum distance between WCF monopoles shall be 1500 feet. Separation shall be measured by following a straight line from one monopole to the next. For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied."

The applicant, Acom Consulting, seeks a variance from this code requirement. As stated in TDC Section 33.025(1) "The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1,500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) **or** (b)." The original application provided findings for 33.025(1)(a)(i) through (iii). The applicant has provided a revised narrative to demonstrate findings for 33.025(1)(b).

### **TDC 33.025(1)(b) Site Characteristics**

**The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.**

The applicant stated that the proposed location includes tall, dense, evergreen trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. The applicant submitted photo simulations to demonstrate this assertion.

Staff found, based the materials submitted by the applicant, that the application meets this criteria. Staff's full analysis and findings are included as Attachment A and the applicants narrative and photo simulations are Exhibits A and B to staff's analysis and findings.

The full staff reports from December 7, 2017 and November 16, 2017 are included as Attachment B.

### **OUTCOMES OF DECISION:**

Approval of VAR17-0001 would result in the following:

- Allows the applicant to locate a Wireless Communication Facility (WCF) at 10290 SW Tualatin Road; and
- Allows staff to review an Architectural Review (AR) for the proposed WCF project.

Denial of VAR17-0001 would result in the following:

- Prohibits the applicant from locating a WCF at 10290 SW Tualatin Road.
- An Architectural Review decision must be denied as it could not meet the separation standard.

### **ALTERNATIVES TO RECOMMENDATION:**

The Tualatin Planning Commission has two options

1. Approve the proposed variance with appropriate findings that state the application meets the criteria of TDC 33.025(1)(b); or
2. Deny the proposed variance with appropriate findings that the application fails to meet the criteria of TDC 33.025(1)(b)

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**Attachments:**    Attachment A - Analysis and Findings with Exhibits A and B  
                          Attachment B - Previous Staff Reports and Attachments  
                          Attachment C - Applicant Request for Continuance Dec 7 2017

# POR DURHAM WIRELESS COMMUNICATION FACILITY (WCF)

## VARIANCE APPLICATION (VAR-17-0001)

### ATTACHMENT A: ANALYSIS AND FINDINGS

The issue before the Tualatin Planning Commission (TPC) is consideration of a Variance (VAR) request for Wireless Communication Facility (WCF) separation that would allow the construction of a new 100-foot-tall monopole with antennas mounted at the top and opportunities for ancillary ground equipment within 1,500 feet of an existing WCF located at 10699 SW Herman Road approximately 800 feet southwest of the proposed WCF location. The proposed WCF would be located at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) on a property owned by Tote 'N Stow and operates as a storage facility for recreational vehicles.

Specifically, the applicant is asking for a variance from one of the Community Design Standards regulating wireless communication facilities. That standard (TDC 73.470(9)) requires a 1,500 foot separation between wireless communication facility monopoles.

“The minimum distance between WCF monopoles shall be 1500 feet. Separation shall be measured by following a straight line from one monopole to the next. For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied.”

In order to grant the proposed variance, the request must meet the approval criteria of Tualatin Development Code (TDC) Section 33.025(1). The applicant prepared a narrative that addresses the criteria, which is included here as Exhibit A, and staff has reviewed this and other application materials and included pertinent excerpts below.

*The following materials and descriptions are based largely on the applicant’s narrative; staff has made some minor edits. Staff comments, findings, and conditions of approval are in italic font.*

#### **Section 33.025 – Criteria for Granting a Variance for a Wireless Communication Facility.**

**No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.**

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.**
  - (a) coverage and capacity.**
    - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has**

**been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report;**

**Applicant Response:** Not applicable – Applicant has demonstrated compliance with Section 33.025(1)(b) as discussed below.

*Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).*

- (ii) **The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and**

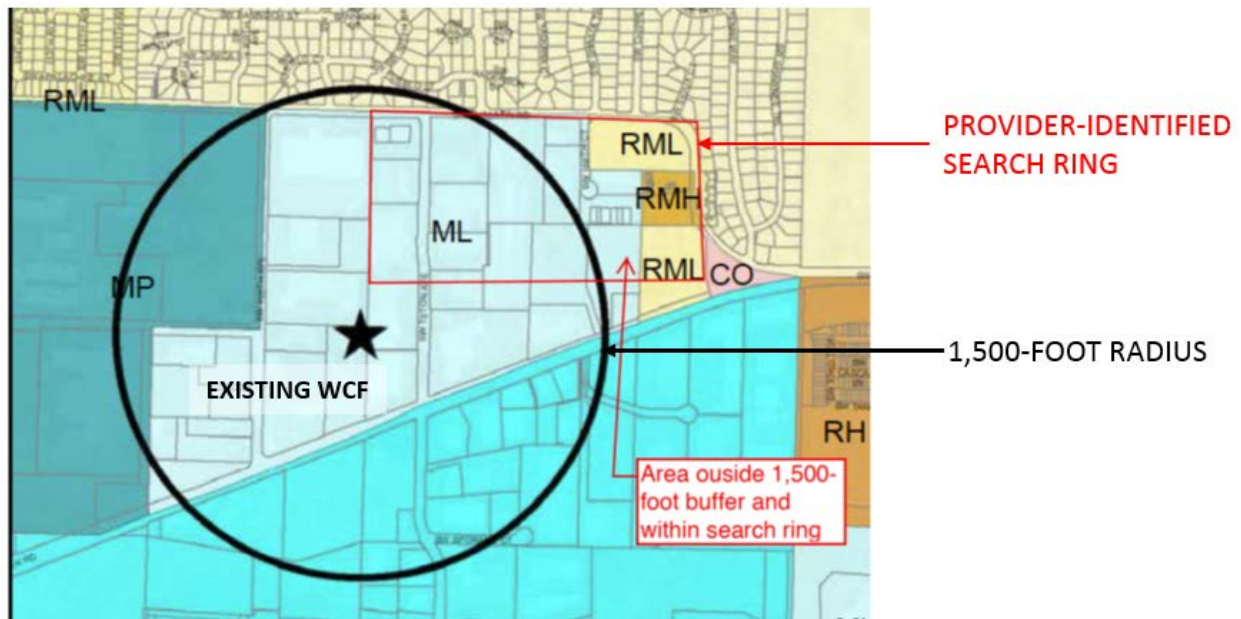
**Applicant Response:** Not applicable – Applicant has demonstrated compliance with Section 33.025 (1)(b) as discussed below.

*Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).*

- (iii) **There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.**

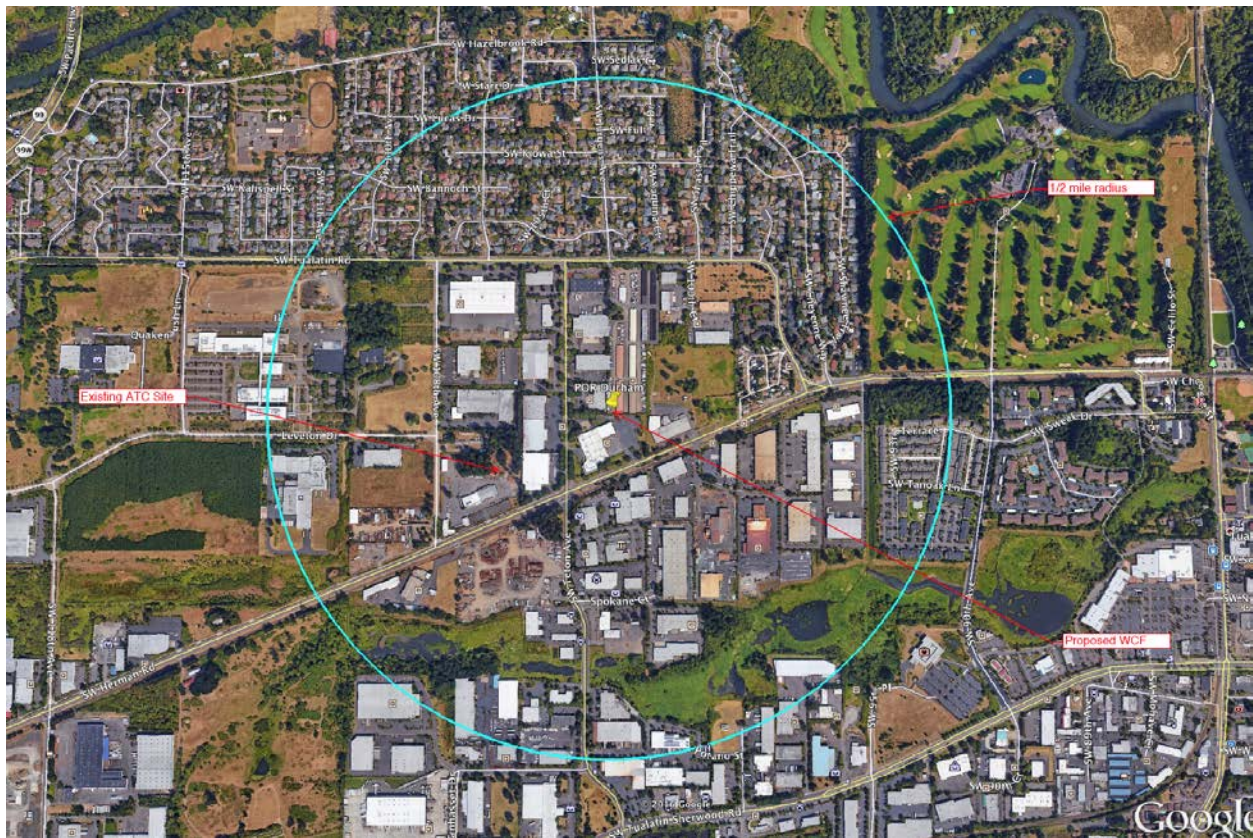
**Applicant Response:** No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.

*(Excerpts from applicant material)*





**Existing Tower 1,500' radius with Verizon Search Ring Overlap**



**1/2 Mile radius of proposed tower**

Staff notes that the applicant has revised their findings included in the original staff report dated November 16, 2017. The revised findings address criterion in section 33.025(b) and not criteria in 33.025(a).

- (b) **site characteristics.** The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.

**Applicant Response:** Proposed monopole location includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. See attached photo simulations from various locations within the nearby RL District. A balloon test was used to verify height and location of the proposed monopole which was virtually invisible from most locations within the RL District.

**Staff Response:** The subject property, located at 10699 SW Herman Road, is bound on the north by a Low Density Residential (RL) planning district, directly on the east, west and south by a Light Manufacturing (ML) Planning District. The surrounding area to the east includes Medium Low Density (RML) and Medium High Density (RMH) residential planning districts. There are no small lot subdivisions in the RML district in the surrounding area to the east of the subject property.

*The applicant has submitted photo simulations included here at Exhibit B. Photos were taken in five different locations including from the RL planning district and the RML and RMH planning districts. Photos were also taken from the ML planning district. These photos demonstrate the subject project has tall evergreen trees that will screen 50% of the monopole.*

*View #1 shows that looking south from the RL planning district toward the site tall evergreens completely block the view of the property. View #2 is from the ML planning district and although the criterion does not require screening from ML this photo shows there are tall evergreens and other dense trees along the eastern property line. View #3 was taken from the RMH and RML area to the east. In this photo evergreens are present and other tall trees but the monopole is not as well screened as from other vantage points. View #4 is from the border of the RL and ML planning districts, and in these photos no evergreens are present and the tower is somewhat visible beyond an existing industrial building. View #5 is taken from the RL planning district looking southeast. Evergreens are present in this photo as well as other tall trees that help screen the proposed monopole.*

*The photo simulations of the proposed monopole in views #1, #4 and #5 are most applicable given that the criterion is specific to screening from an RL district or an RML district with a small lot subdivision. There is not a small lot subdivision in the surrounding area to the east where RML is located. Views 1, 4 and 5 were taken from the RL planning district or the boundary of RL and ML. View #1 shows the location completely screened by dense tall evergreens. View #4 does not show evergreens in the photo but screening from an existing building. View #5 shows the presence to tall evergreens and some screening. Staff finds that at least 50% of the proposed monopole will be screened by tall dense evergreen trees from the RL planning district.*

*This criterion is met.*

## **Exhibits**

Exhibit A: Applicant Narrative

Exhibit B: Photo Simulations

APPLICATION FOR  
VARIANCE

**UNMANNED WIRELESS  
TELECOMMUNICATIONS  
FACILITY AT:**

10290 SW Tualatin Road  
Tualatin, OR 97062

**Prepared By**



**Date**

January 08, 2018

**Project Name**

POR Durham



Applicant: Lendlease (US) Telecom Holdings LLC  
c/o PI Tower Development LLC  
909 Lake Carolyn Parkway  
Irving, TX 75039

Co-Applicant: Verizon Wireless (VAW), LLC dba, Verizon Wireless  
5430 NE 122<sup>nd</sup> Avenue  
Portland, OR 97230

Representative: Acom Consulting, Inc.  
Reid Stewart  
5200 SW Meadows Road, Suite 150  
Lake Oswego, OR 97035

Property Owner: Tote 'N Stow, Inc.  
10290 SW Tualatin Road  
Tualatin, OR 97062

Project Information:  
Site Address: 10290 SW Tualatin Road, Tualatin, OR 97062  
Parcel: 2S123B000800  
Parcel Area: 3.63 acres  
Zone Designation: ML (Light Manufacturing Planning District)  
Existing Use: Storage Facility  
Project Area: 1,200 square foot lease area (25' x 48' fenced equipment area)

**Chapter 33: Variances**

**Section 33.025 – Criteria for Granting a Variance for a Wireless Communication Facility.**

*No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.*

- (1) *The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.*
  - (a) *coverage and capacity.*
    - (i) *It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not*

*denied. The needed capacity or coverage shall be documented with a Radio Frequency report;*

**Response: Not applicable – Applicant has demonstrated compliance with Section 33.025(1)b) as discussed below.**

*(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and,*

**Response: Not applicable – Applicant has demonstrated compliance with Section 33.025(1)b) as discussed below.**

*(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.*

**Response: No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.**

*(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.*

**Response: Proposed monopole location includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity. See attached photo simulations from various locations within the nearby RL District. A balloon test was used to verify height and location of the proposed monopole which was virtually invisible from most locations within the RL District.**

*(2) The City may grant a variance to the maximum allowable height for a WCF if the applicant demonstrates:*

*(a) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide at a height that meets the TDC requirements. The needed capacity or coverage shall be documented with a Radio Frequency report; and,*

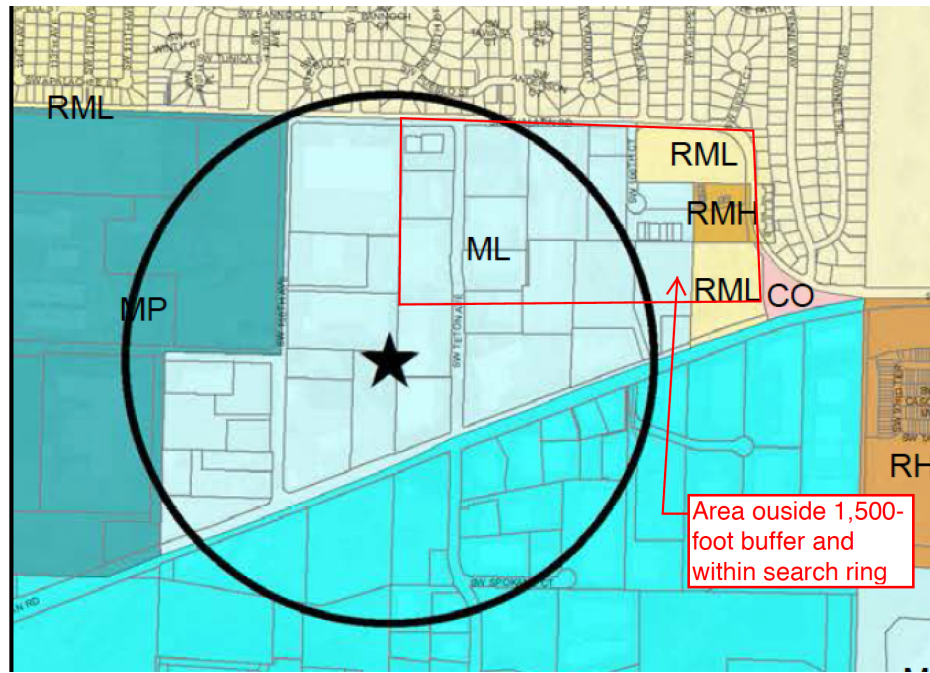
*(b) The collocation report, required as part of the Architectural Review submittal, shall document that existing WCFs, or a WCF for which an application has been filed and not denied, cannot be modified to provide the capacity or coverage the tower is intended to provide.*

**Response: Not applicable – Applicant is not requesting a variance to the maximum allowable height for the proposed WCF.**

**VERIZON SEARCH RING**



**EXISTING TOWER 1,500' RADIUS WITH VERIZON SEARCH RING OVERLAP**



**½ MILE RADIUS OF PROPOSED TOWER**





TIM BRADLEY IMAGING

PHOTO SIM LOCATION MAP



# POR DURHAM

10290 SW TUALATIN RD., TUALATIN, OR

Exhibit B- Applicant Photo Simulations





Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the photographer's interpretation of the proposed development.

TIM BRADLEY IMAGING



VIEW #1  
TOWER NOT SEEN

Exhibit B- Applicant Photo Simulations

**POR DURHAM**  
10290 SW TUALATIN RD., TUALATIN, OR  
2 of 6



# POR DURHAM

10290 SW TUALATIN RD., TUALATIN, OR



CURRENT

VIEW #2 LOOKING SOUTHWEST  
ON SW 100TH COURT



PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the photographer's interpretation of the proposed development.

TIM BRADLEY IMAGING



# POR DURHAM

10290 SW TUALATIN RD., TUALATIN, OR



CURRENT

VIEW #3 LOOKING SOUTHWEST  
ON SW TUALATIN ROAD



PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the photographer's interpretation of the proposed development.

TIM BRADLEY IMAGING



# POR DURHAM

10290 SW TUALATIN RD., TUALATIN, OR



CURRENT

VIEW #4 LOOKING SOUTHEAST  
ON SW TUALATIN RD. AT SW TETON AVE.



PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the photographer's interpretation of the proposed development.

TIM BRADLEY IMAGING



# POR DURHAM

10290 SW TUALATIN RD., TUALATIN, OR



CURRENT

VIEW #5 LOOKING SOUTHEAST  
ON SW 105TH COURT & SW PUEBLO ST.



PROPOSED

Visual impact will be affected by location and visibility of observer. This document is for planning and information purposes only and is conceptual. This is solely the photographer's interpretation of the proposed development.

TIM BRADLEY IMAGING



# STAFF REPORT

## CITY OF TUALATIN

**TO:** Tualatin Planning Commissioners

**FROM:** Aquilla Hurd-Ravich, Planning Manager

**DATE:** 12/07/2017

**SUBJECT:** Reconvene to consider a Variance to the Wireless Communication Facility (WCF) Separation Requirement for the POR Durham project in the Light Manufacturing (ML) Planning District at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 0008000) (VAR17-0001)(RESO TDC609-17)

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### **ISSUE BEFORE TPC:**

A public hearing began on November 16, 2017 to consider a request by Acom Consulting for a variance to the separation standards of wireless communication facilities. At the hearing, an opponent to the proposal requested the record to be left open for 21 days. The Planning Commission granted this request under statutory obligation ORS 197.763. The applicant and opponent submitted new evidence on November 22, 2017. This new evidence was posted and distributed for consideration by the Planning Commission. The applicant has seven days to rebut any evidence prior to the Planning Commission reconvening on December 7, 2017.

### **RECOMMENDATION:**

Staff recommends that the Tualatin Planning Commission consider the staff report and supporting attachments. Since the public hearing on November 16, 2017, staff was made aware of new evidence submitted by the opponent that claims the existing wireless communication facility can be modified to support another provider. Based on this new evidence staff no longer finds that the application meets the variance criteria in 33.025 (1)(a)(ii).

### **EXECUTIVE SUMMARY:**

Acom Consulting, Inc. proposes to construct a new unmanned wireless communication facility (WCF) on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. on the southwest corner of 10290 SW Tualatin Road. The proposed WCF would include a new 100-foot monopole support tower with antennas mounted at the top and opportunities for ancillary ground equipment including equipment cabinets, natural gas generator, cabling and ice bridge will be located below in a new 25' x 48' secure fenced lease area surrounding the tower. It is anticipated the the proposed WCF will generate approximately 1-2 visits per month from a site technician.

The proposed WCF would be located within 1,500 feet of an existing WCF at 10699 SW Herman Road. Tualatin Development Code 73.470(9) requires that WCFs are separated by 1,500 feet:

The minimum distance between WCF monopoles shall be 1500 feet. Separation shall be measured by following a straight line from one monopole to the next. For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied.

The applicant, Acom Consulting, seeks a variance from this code requirement. As stated in TDC Section 33.025(1) " The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1,500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) **or** (b)." The original application provided findings for 33.025(1)(a)(i) through (iii).

Staff has revised our findings since receiving evidence from American Tower Corporation stating that the existing monopole at 10699 SW Herman Road can be modified to accommodate another provider, revised Analysis and Findings are included as Attachment A. The original staff report and all attachments are included as Attachment D.

To grant the requested variance, the TPC must find the applicant has demonstrated compliance with the following:

**TDC 33.025(1)(a): Coverage and Capacity**

**(i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report.**

The applicant states that the potential sites outside of the 1,500- foot radius from the existing WCF at 10699 SW Herman Road were eliminated from consideration due to the lack of adequacy of service improvements from these locations and their close proximity to residential areas where these facilities are not permitted or where visual impacts may occur. The applicant also noted that the existing WCF at 10699 SW Herman Road was not a suitable location due to interference from trees surrounding the site (which would affect coverage) and the applicant provided a RF Engineer Interference Letter in addition to the required RF report.

**(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which an application has been filed and not denied, cannot be modified to accommodate another provider.**

The applicant states that modifications to the existing WCF at 10699 SW Herman Road required to host the proposed antennas would result in greater impacts than those of constructing an entirely new monopole structure at the proposed Tote 'N Stow site, namely increasing the height of the 146-foot tall existing WCF (which required a variance to permit its construction in 2000) or the topping or removal of trees that were preserved as a condition of that variance (VAR99-02). The maximum permitted height of the WCFs in the Light Manufacturing (ML) Planning District is 100 feet and the proposed WCF would not require a height variance.

Staff has modified the original findings for this criterion based on evidence submitted by the opponent's representatives of American Tower Corporation, Saalfeld Griggs, at the public hearing on November 16, 2017. The opponent evidence stated:

"The decision granting ATC the variance to construct its existing tower (VAR-99-02) does not contain a condition of approval prohibiting any further clearing of trees (the "**Existing Decision**"). The Existing Decision did include findings of fact that contemplated some tree removal and trimming of trees in a manner as less impactful as necessary. [...] Therefore, upon issuance of a tree removal permit and with the consent of the City of Tualatin as the landlord and owner of the surrounding property, it is feasible for ATC to remove the exiting trees within the approximately 155-foot radius of the ATC tower. As the supplemental RF report and map identify, if ATC were to remove the trees creating such interference, coverage would be acceptable for the service parameters provided in the record. Therefore, the staff report [from November 16, 2017] contains an incorrect findings of fact in finding that removal of the trees cannot occur."

Staff notes there are two alternatives to modify the existing tower pending property owner concurrence and approval. One alternative is to request a Tree Removal Permit in order to remove trees that could be causing interference. The second alternative is to extend the height of the existing tower either to the total height granted by VAR99-02 of 146- feet total inclusive of monopole and antennas or request a height variance. The modified analysis and findings and related exhibits are included as Attachment A.

Additional materials from the applicant and the opponent are included as Attachment B- Materials from applicant and Attachment C- Materials from opponent.

#### **OUTCOMES OF DECISION:**

Approval of VAR17-0001 would result in the following:

- Allows the applicant to locate a Wireless Communication Facility (WCF) at 10290 SW Tualatin Road; and
- Allows staff to review an Architectural Review (AR) for the proposed WCF project with an appropriate location.

Denial of VAR17-0001 would result in the following:

- Prohibits the applicant from locating a WCF at 10290 SW Tualatin Road.

#### **ALTERNATIVES TO RECOMMENDATION:**

The Tualatin Planning Commission has two options

1. Approve the proposed variance with appropriate findings that state the application meets the criteria of TDC 33.025(1); or
2. Deny the proposed variance with appropriate findings that the application fails to meet the criteria of TDC 33.025(1)

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**Attachments:**    [Attachment A- Revised Analysis and Findings and Exhibits](#)  
                          [Attachment B- Supplemental materials from Acom \(applicant\)](#)  
                          [Attachment C- Supplemental materials from ATC \(opponent\)](#)  
                          [Attachment D - Staff Report and Attachments from November 17, 2016](#)  
                          [Attachment E - Applicant Rebuttal November 29, 2017](#)



# POR DURHAM WIRELESS COMMUNICATION FACILITY (WCF)

## VARIANCE APPLICATION (VAR-17-0001)

### ATTACHMENT A: ANALYSIS AND FINDINGS

The issue before the Tualatin Planning Commission (TPC) is consideration of a Variance (VAR) request for Wireless Communication Facility (WCF) separation that would allow the construction of a new 100-foot-tall monopole with antennas mounted at the top and opportunities for ancillary ground equipment within 1,500 feet of an existing WCF located at 10699 SW Herman Road approximately 800 feet southwest of the proposed WCF location. The proposed WCF would be located at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) on a property owned by Tote 'N Stow and operates as a storage facility for recreational vehicles.

In order to grant the proposed variance, the request must meet the approval criteria of Tualatin Development Code (TDC) Section 33.025(1). The applicant prepared a narrative that addresses the criteria, which is included within the application materials (Attachment B), and staff has reviewed this and other application materials and included pertinent excerpts below.

*The following materials and descriptions are based largely on the applicant's narrative; staff has made some minor edits. Staff comments, findings, and conditions of approval are in italic font.*

#### **Section 33.025 – Criteria for Granting a Variance for a Wireless Communication Facility.**

**No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.**

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.**
  - (a) coverage and capacity.**
    - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report;**

**Applicant Response:** Verizon Wireless, the co-applicant, has done extensive research looking at opportunities in the area to collocate on existing towers or buildings, as that is always a preferred option when available. If an existing tower or structure is not available at the specified height or not attainable because of space constraints or unreliable structural design, then Verizon Wireless will propose a new tower. In this instance, there is one existing tower, the ATC tower, which is located outside of the search area designated as usable by Verizon Wireless' RF department, but within the 1,500-foot radius of the

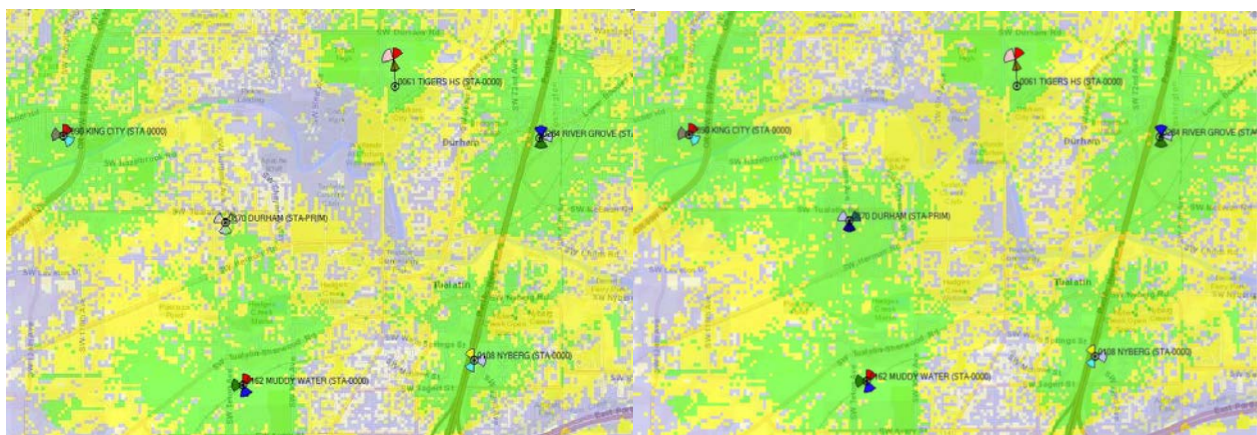
proposed facility. This tower is not viable as a solution to meet their coverage and capacity objectives due to the existing trees that would cause interference. There are no other existing towers available to collocate on within the area of interest thus a new tower is being proposed, which will in turn be available for other providers to collocate on in the future.

In order to meet the Verizon's coverage and capacity objectives, it is necessary to site a tower within the search ring provided by Verizon's RF department as shown below. Moving outside this search ring is technically not practicable and has adverse effects on providing the needed coverage and capacity objectives the tower is intended to provide, which include nearby high-traffic residential areas to the North. Siting outside the search ring can also create interference with other nearby network sites where coverage may overlap.

The Applicant is requesting a variance to the 1,500-foot tower separation requirement. There is an existing 146-foot ATC monopole support structure outside of the search ring, approximately 750 feet to the SW of the proposed support tower, located at 10699 SW Herman Road. Per the tower owner, there is currently available space on the tower at the 100-foot level, however this is not high enough to avoid interference from multiple trees surrounding the tower and still meet coverage and capacity objectives to the North, as detailed in the attached RF Usage and Facility Justification Report and RF Engineer Interference Letter.

Locating the tower within the search ring and outside the 1,500-foot radius of the nearby existing ATC tower is also not a desirable alternative as it would mean locating in another part of the ML zone without existing screening or in the RML or RMH zone, where a conditional use permit would be required and where it would be very visible to nearby residential areas. In addition, T-Mobile has also indicated that they intend on co-locating on the proposed WCF, if approved, as the existing ATC tower to the SW will not meet their coverage and capacity requirements either as noted in the attached Letter from T-Mobile RF.

*Staff notes that the search ring is defined by the service provider based on their coverage and capacity objectives. As highlighted in the "RF Usage and Facility Justification" report, the proposed WCF is intended to improve service to the residential areas immediately adjacent to and on both sides of the Tualatin River (see Figures C-1 and C-2). Areas within the search ring but outside of the 1,500-foot radius of the existing WCF at 10699 SW Herman Road are either within or closer to residential planning districts which either prohibit completely or restrict heights of WCFs (see Figure C-3).*



**Figure C-1: Existing Coverage**

**Figure C-2: Proposed Coverage**

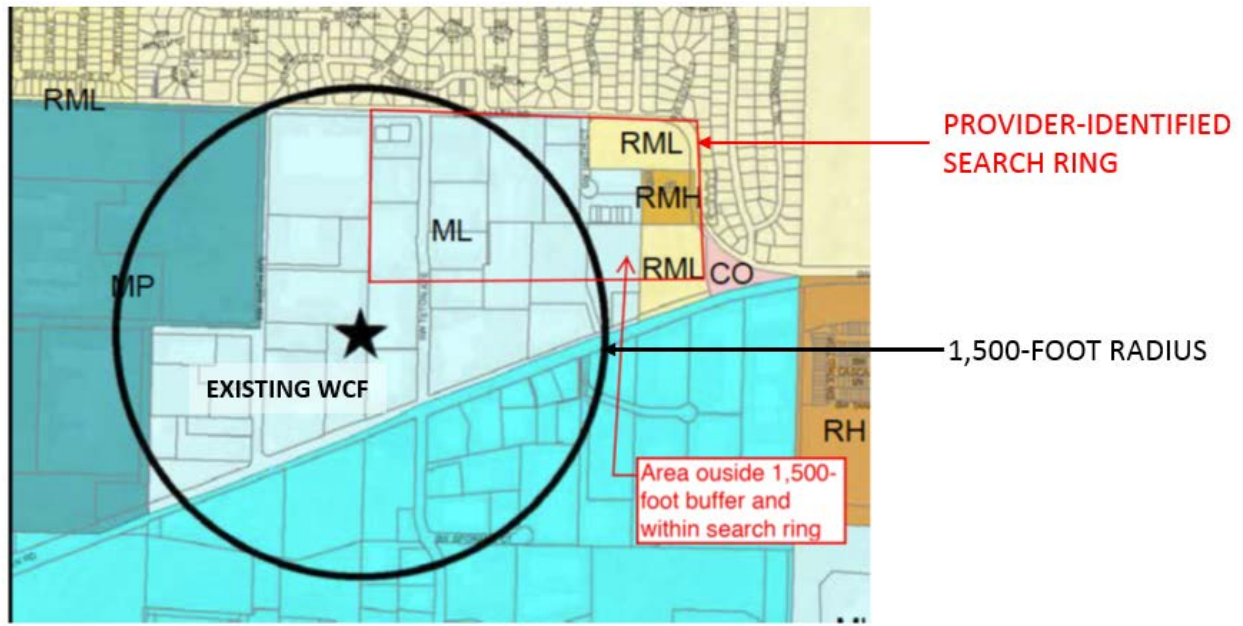


Figure C-3: Search Ring and 1,500-Foot Separate Overlap Map

Staff finds that this criteria is met.

- (ii) **The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and**

**Applicant Response:** The only existing monopole tower located within 1,500 feet of the proposed location cannot be modified as it is not designed to be extended to the necessary height required to avoid interference from the tall trees currently surrounding the tower. The existing tower would need to be removed and replaced with a new tower at least 20-30 feet taller to avoid interference unless the trees were to be removed or reduced in height to approximately the 100-foot level or lower.

Topping the trees would create undesirable visual impacts to nearby residential areas, whereas the proposed location is well screened to nearby residential areas to the North and does not require the removal or trimming of any existing trees. The topped trees would also create a negative visual impact on their own, as over a third of the height would need to be removed to avoid interference.

**Opponent (Saalfeld Griggs/ATC) Response:** The variance (VAR-99-02) that allowed the construction of the existing ATC WCF at 10699 SW Herman Road did not contain a condition of approval prohibiting any further clearing of trees; in addition, this decision did include findings of fact that contemplated some tree removal and trimming of trees in a manner as less impactful as necessary. Therefore, upon issuance of a tree removal permit and with the consent of the City of Tualatin as the landlord and owner of the surrounding property, it is feasible for ATC to remove the existing trees within the approximately 155-foot radius of the ATC tower (see Exhibit A). As the supplemental RF report and map identify (see Exhibit B), if ATC were to remove the trees creating such interference, coverage would be acceptable for the service parameters provided in the record. Therefore, the staff report contains an incorrect finding of

fact in finding that removal of the trees cannot occur. A copy of the VAR-99-02 decision is attached hereto and incorporated herein for your reference. ATC requests the Planning Commission to deny the proposed variance request.

*Based on the conditions at 10699 SW Herman Road, modifying the existing WCF to attach functioning antennas would require either an additional height variance for the existing WCF (which already received one to permit its construction in 2000) or a forced height reduction in the trees adjacent to the existing monopole. In the analysis and findings for the variance (VAR 99-02) that allowed the construction of the existing 146-foot-tall WCF, it was noted that one of the reasons for the granting of that variance was to preserve the grove of approximately 50 tall conifers at heights of 100 to 120 feet (the construction of the existing WCF resulted in the removal of 6 trees). VAR-99-02 included the following:*

*“The City as the landowner desires to retain the large conifer trees on the subject portion of the Operations Center property and requires that development such as the proposed communications facility disturb as few conifer trees on the site as possible. The applicant states that wireless RF signals must travel in an unobstructed path from the facility to the user. Because the tower and antennae are proposed to be located in the grove of 100'-120' tall conifers and the City as the property owner does not wish to have the obstructing trees removed, the antennae must be at a height greater than the height of the neighboring trees (with consideration of the future growth of the trees).”*

*As such, barring a reversal in the City's preference to not remove trees on its Operations Center site, the options for locating a new WCF in this area include either further increasing the height of the existing 146-foot-tall WCF (the maximum allowed WCF height in the Light Manufacturing [ML] Planning District is 100 feet) or constructing a new structure. The applicant is making the case that a new 100-foot-tall structure would result in less impacts than extending the height of the existing WCF at 10699 SW Herman Road.*

Staff notes that barring a discussion of impacts to removing more than 50 tall conifer trees within 155 feet of the existing ATC tower at 10699 SW Herman Road, the opponent assertion that the existing facility can be modified accommodate another provider—which would require at minimum a tree removal permit and some form of architectural review yet to be determined—is factually correct.

Staff finds that this criteria is not met.

- (iii) **There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.**

**Applicant Response:** No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps.

*Staff notes that—through field visits—the applicant is correct in their assertion that there are no other structures of suitable height to attach antennas that would provide approximate coverage as the proposed WCF, also noting the maximum structure height (outside of flagpoles and WCFs) of 50 feet in the Light Manufacturing (ML) Planning District.*

Staff finds that this criteria is met.

- (b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.**

**Applicant Response:** Application has demonstrated compliance with Section 33.025(1)(a) above, however proposed location also meets this requirement and includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity.

*Staff notes that the applicant has chosen to demonstrate compliance with TDC Sections 33.025(1)(a)(i) through (iii) above; therefore, a compliance determination with TDC Section 33.025(1)(b) is not required and the standards in this section do not apply.*

### **SUMMARY OF ANALYSIS AND FINDINGS**

~~Based on the application materials and the analysis and findings presented above, staff finds that VAR-17-0001 meets all criteria of TDC 32.025(1)(a), "Criteria for Granting a Variance for a Wireless Communication Facility." As staff finds that the VAR-17-0001 proposal does not meet TDC 32.025(1)(a)(ii), the Planning Commission should not grant a variance from the 1500-foot-separation provisions of TDC 73.470(9).~~

### **Exhibits**

Exhibit A: Operations Cell Tower Site with 155-foot radius

Exhibit B: Complete Saalfeld Griggs/ATC Response Packet

November 16, 2017

**VIA ELECTRONIC MAIL: ahurd-ravich@tualatin.gov**  
Original to follow via hand delivery



City of Tualatin Planning Commission  
Attn: Aquilla Hurd-Ravich  
18880 SW Martinazzi Ave  
Tualatin, OR 97062-7092

RE: PI Tower Development Project OR-Tualatin-Durham/ 10290 SW Tualatin Road  
(Tax Map/Lot: 2S1 23B 000800) (VAR-17-0001)  
Our File No: 00000-28543

Dear Ms. Hurd-Ravich and Honorable Planning Commissioners:

I represent American Tower Corporation, a Delaware corporation, and Tower Asset Sub, Inc., a Delaware corporation ("**ATC**"), which owns a wireless communications facility located at 10318 SW Herman Road, Tualatin, Oregon (the "**ATC Tower**"). ATC is impacted by the proposed wireless communication facility on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. (herein collectively "**Applicant**") on the southwest corner of 10290 SW Tualatin Road, Tualatin, Oregon (herein the "**Subject Property**"). Applicant's proposed tower is located within 1,500 feet of the ATC Tower; specifically, the proposed tower is approximately 750 feet from the ATC Tower. Therefore, under the Tualatin Development Code Section 33.025(1)(a) a variance is needed. Applicant's proposed findings as justification for the variance to the 1,500-foot radius requirement from an existing tower is an assertion that the existing ATC Tower is not suitable for co-location of additional carriers because of interference from the trees surrounding the site and has provided an RF interference letter in addition to its RF report. ATC acknowledges that under the current circumstances, the height of the trees would create interference for new co-location of carriers below the existing carrier heights; however, the interference from the trees can be eliminated. ATC has provided supplemental RF coverage analysis, which is attached hereto and incorporated by this reference herein, that supports ATC's position.

ATC submits these comments for the purpose of correcting the factual record and the proposed legal conclusions contained in the staff report; specifically, the decision granting ATC the variance to construct its existing tower (VAR-99-02) does not contain a condition of approval prohibiting any further clearing of trees (the "**Existing Decision**"). The Existing Decision did include findings of fact that contemplated some tree removal and trimming of trees in a manner as less impactful as necessary. However, in the approximately 17 years following the issuance of the Existing Decision, the circumstances have changed and the surrounding trees have grown. Therefore, upon issuance of a tree

Park Place, Suite 200  
250 Church Street SE  
Salem, Oregon 97301

Post Office Box 470  
Salem, Oregon 97308

tel 503.399.1070  
fax 503.371.2927

Attachment A- Exhibit A pg 1

www.sglaw.com


removal permit and with the consent of the City of Tualatin as the landlord and owner of the surrounding property, it is feasible for ATC to remove the existing trees within the approximately 155-foot radius of the ATC Tower. As the supplemental RF report and map identify, if ATC were to remove the trees creating such interference, coverage would be acceptable for the service parameters provided in the record. Therefore, the staff report contains an incorrect finding of fact in finding that removal of the trees cannot occur. A copy of the VAR-99-02 decision is attached hereto and incorporated herein for your reference.

Alternatively, ATC could potentially file a new variance application requesting permission to further extend the height of the ATC Tower by approximately twenty feet in recognition of the change in circumstances created by the passage of time and the annual growth of the trees and data coverage needs existing today as compared to 1999, when ATC originally applied for the Existing Decision. Such a variance application, if requested, would likely be approved and is certainly feasible. Therefore, ATC has two options in obtaining the necessary approvals for servicing the coverage request as identified in the existing record. Accordingly, the assertion that ATC cannot, as a matter of law, provide the requested coverage is inaccurate.

ATC requests the Planning Commission to deny the proposed variance request. In the alternative, ATC requests the Planning Commission to keep the record open for a period of not less than 21 days to give ATC an opportunity to provide additional evidence and argument as it pertains to the proposed variance request.

Thank you for your time and attention.

Sincerely,



ALAN M. SOREM  
asorem@sglaw.com  
Voice Message #303

AMS:jsm  
Enclosures  
cc: Client

## Micah Hawthorne

Framingham, MA  
[linkedin.com/in/micahhawthorne](https://www.linkedin.com/in/micahhawthorne)

c: 617-828-3967  
[micah.hawthorne@yahoo.com](mailto:micah.hawthorne@yahoo.com)

### SUMMARY

Proven implementation and results driven professional with 10+ years of technical program management and 5+ years of pre-sales engineering/consulting experience planning, implementing, deploying, and integrating wireless mobile networks. Recognized as a strategic thinker, consistent finisher, creative problem solver, and successful team leader. Exceptional oral and written communicator with an ability to influence through collaboration, business acumen, and technical subject matter expertise.

### CORE COMPETENCIES

- Program & project management
- Multi-project engagement and coordination
- Cross-functional collaboration
- Speed-to-market risk analysis and planning
- RF/BH site planning and network deployment
- Pre-sales technical analyst and support

### EDUCATION & TRAINING

MBA - High Technological Focused	Northeastern University, Boston, MA
Certificate in Applied Project Management	Boston University Corporate Education, Waltham, MA
BS in Electrical Engineering	University of South Alabama, Mobile, MA
Candidate for BS in Electrical Engineering	Massachusetts Institute of Technology, Cambridge, MA

### PROFESSIONAL EXPERIENCE

**AMERICAN TOWER, Woburn, MA** **2012-2017**

**Principal Sales Engineer - Project Manager & Network Development Planning Partner; 5+ yrs.**

- Proactively investigate and pursue incremental business with Sales team by driving coverage solutions in challenging areas. Additionally support Sales team to achieve two commercial \$100K+ MRR deals.
- Support Business Development efforts by analyzing requirements, understanding network coverage goals, and recommending innovative solutions to win comprehensive deals. Research technology trends to identify roadmaps that enhance long term contract value with Carrier and Vertical Market customers. Successes include 20+ new sites RFP with Pitkin County, CO., 200+ sites deal for AT&T In-Flight project, and 20+ sites deal with Pacific Data Vision long term equipment upgrade plans.
- Acquire and analyze carrier network performance data and develop metrics paired with site intelligence to proactively identify multi-tenant tower location opportunities. Released 400+ search areas over 1 year based on lack of 3G voice and 4G LTE data service in suburban growth markets and several heavily trafficked thoroughfares with no tower infrastructure. Partnered with Network Development teams to evaluate and lease land assets for proactive tower development.

**ERICSSON (RF/BH organization spun off from Clearwire), Waltham, MA** **2004-2012**

**RF/BH Manager New England – Program Manager; 9 mos.**

- Directed a team of 10 Project Managers accountable for network performance monitoring, trouble ticket administration and closeout for post launch service optimization. The team served as 1st line local engineering support for capacity augments, RF repeaters, and In-Building DAS, for Clearwire's 4G network of 850+ sites stretching across 7 Northeast markets from Upstate NY to Boston, MA. Achieved Bonus Level for 35% of network KPIs within 6 months of customer launch weathering 30% head count reduction. Target exceeded on remaining 65% of KPIs. Coordinated action plans with Field Operations team to exceed 99.75% network availability target and timely trouble ticket closeouts in all markets.

**CLEARWIRE (4G RF/BH organization spun off from Sprint Nextel), Waltham, MA**

**RF/BH Manager New England – Program Manager; 2.5 yrs.**

- Managed project team of up to 11 RF/BH Engineers responsible for designing, planning, integrating, and launching 450+ sites across 5 New England markets. Met strategic coverage objectives with over 8M POPs served. Achieved MW BH connectivity on 97% of sites reducing BH Opex by approx. 80%.



- Coordinated the RF/BH team's design efforts, aligning metrics and goals with local and remote cross-functional teams, including Site Acquisition, Construction, Field Operations, National Engineering, and Sales & Marketing teams. Regularly evaluated, adjusted, and presented project milestone progress to executive team. Challenges included on-the-fly network redesigns due to difficult zoning. Collaborated daily with Network Deployment's construction efforts ensuring on time 2010 market launches in line with End of Year investor commitment.
- Developed RF/BH team led On-Air site integration and network acceptance process. Removal of implementation bottle necks enabled run rate of 40+ sites per week and associated MW backhaul links.

**SPRINT NEXTEL (Nextel merger with Sprint in 2005), Bedford, MA**

**RF Design Manager New England North – Project Management Lead; 2 yrs.**

- Headed team of RF design engineers responsible for 400+ single- and multi- technology site build plan deployment throughout New England area. Deployments of note included site relocations and Cell-On-Wheels (COWs) for capacity expansion in Boston core and special events.
- Standardized zoning message and presentation format for 3<sup>rd</sup> party Site Acquisition and Design team. Debated the efficacy via mock trials. Enabled consistent message platform for better public awareness to towns, engineer-to-engineer scheduling flexibility, and shorter time to permit for quicker NTPs.

**RF Engineer III – Project Manager; 1.5 yrs.**

- Prepared and released coverage goals for new and replacement site locations in accordance with build plan budgets. Sites chosen based on network performance KPI improvement requirements and Sales team coverage expansion needs. Presented RF coverage to local boards for zoning permits.
- Served as New England North Design Team POC for cross-functional groups to meet deliverable timeframes for On Air integration. Created RF plan for new sites and assisted project teams with site integrations in line with customer growth expectations, service quality degradation, Sales team customer specific requests, and budgetary constraints. Met service quality and coverage expansion needs in the metro Boston area with emphasis on urban core and reduced network trouble tickets by 50% over 1 year from customers in poorly served areas.

**NEXTEL, (Converted to full time employee), Bedford, MA**

**2004-2005**

**RF Engineer II; 1 yr.**

**EXPERT WIRELESS SOLUTIONS, Vienna, VA**

**2003-2004**

**RF Engineering Consultant; 1 yr.**

- Positioned, designed, and assisted permitting by 3<sup>rd</sup> party site acquisition teams of new tower assets for Nextel in NH, ME, and MA. Created interstate coverage footprint north of NH along I-95 through to Bar Harbor, ME and Manchester, NH through to Lake Winnepesaukee area increasing sales opportunities to resort POIs.
- Reported in-field drive test analysis enabling service optimization for initial launch of Cingular's GSM network in San Antonio, TX.

**RF CONSULTING SERVICES, Marietta, GA**

**2001-2003**

**RF Engineering Consultant; 1.5 yrs.**

- Implemented turnkey solutions for Cingular's dual band GSM conversion, including design, deployment, and drive test optimization in Puerto Rico market for on time launch of modernized network.
- Oversaw field-testing team responsible for beta testing in-house proprietary software tool for engineering release. Trained and mentored drive test engineers for data processing, coverage analysis, and frequency allocation tool properties for product release to Cingular in two OH and the PR markets.

**GALAXY ENGINEERING SERVICES, Alpharetta, GA**

**2000-2001**

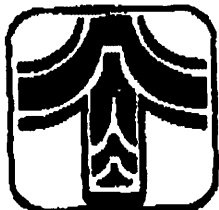
**RF Design Engineering Consultant; 3 mos.**

- Proposed search locations in Northeast region for American Tower's Build-To-Fill project. Maximized potential interested carriers per tower for preemptive site builds with shortest ROI.

**RF Associate Engineering Consultant; 1 yr.**

#### **AWARDS**

Perfect Performance for achieving Bonus Level KPI performance supporting the Clearwire network



# CITY OF TUALATIN

PO BOX 360  
TUALATIN, OREGON 97062-0360  
(503) 692-2000  
TDD 692-0574

## MEETING NOTICE FOR THE CITY COUNCIL AND THE TUALATIN DEVELOPMENT COMMISSION FOR THE CITY OF TUALATIN

MONDAY

January 10, 2000

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Mayor/Chairman Ogden; Councilors/Commissioners Bergstrom, Cain, Chrisman,  
Forrest, Lamb, Weller

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The Council/Commission will meet for the work session meetings at 6:00 p.m. on the second floor of the Council Building and will meet for the regular meetings at 7:30 p.m. in the Council Building, Council Chambers, 18884 SW Martinazzi Avenue.

Assistive Listening Devices for persons with impaired hearing can be scheduled for this meeting by calling 692-2000 (voice) or 692-0574 (Text Telephone) no later than 24 hours prior to the meeting. The City will also upon request endeavor to arrange for a qualified sign language interpreter for persons with speech or hearing impairments. Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. two working days prior to the meeting date (same phone numbers as listed above): 692-2000 or 692-0574.

- SEE ATTACHED AGENDA -

**OFFICIAL CALENDAR OF THE COUNCIL OF THE CITY OF TUALATIN**

The following is a summary of issues to come before the Council at its regular session to be held on Monday, January 10, 2000 at 7:30 p.m. in the Council Chambers.

**Procedure for Legislative Hearings** - (matters which affect the general welfare of the entire City rather than a specific piece of property.)

1. Open hearing and identify subject.
2. Review staff report, receive testimony from the public, close hearing or continue for further testimony or investigation.
3. Council action: approve, deny or continue.

**Procedure for Quasi-Judicial Hearings** - (zone changes, variances, conditional use permits, comprehensive land changes, subdivision plats and land partitioning to comply with "quasi-judicial" requirements of Supreme Court ruling.)

1. Open public hearing and identify subject.
2. Review staff report; receive testimony of proponents, testimony of opponents, proponents' rebuttal; cross examination follows each presentation; close hearing or continue for further testimony or investigation.
3. Council action: approve, deny or continue.

**Time Limits for Public Hearings** - The purpose of time limits on testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that the hearing can be conducted in an efficient and timely manner. All persons providing testimony shall be limited to 10 minutes, subject to the right of the Mayor to amend or waive the time limits.

Resolution No. Begin with 3888-00  
Ordinance No. Begin with 1041-00

1. **ANNOUNCEMENTS**

- A. Howland Award Ceremony for Skate Park Development
- B. Swearing-in of Reserve Police Officers

2. **OPEN MIKE** - For matters not appearing elsewhere on the agenda. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting. **Please limit your comments to no more than 3 minutes.** Total time allocated to OPEN MIKE is 15 minutes at the beginning of the meeting. If there is insufficient time to hear all those wishing to speak, the OPEN MIKE will be continued to the end of the agenda.

3. **CONSENT AGENDA** - Items marked with "c" are considered routine and are part of the consent agenda. The items have been discussed by the Council in work session. They will be adopted by one motion unless a Councilor or person in the audience requests, before the vote on the motion, to have an item considered at its regular place on the agenda.

4. **ACTION ITEMS**

A. **PUBLIC HEARINGS - Quasi-Judicial**

1. Request: CUP-99-05—A Conditional Use Permit to Allow a Family Recreation Center (Outdoor Aquatic Facility) in a General Commercial (CG) Planning District  
Applicant: Dale Williams, Vice-President, Leisure Sports, Inc.  
Site: 18120 SW Lower Boones Ferry Road (2S1 24AB, 800, 500 & 501)

OFFICIAL CALENDAR OF THE TUALATIN CITY COUNCIL FOR JANUARY 10, 2000

**A. PUBLIC HEARINGS - Quasi-Judicial (continued from Page 1)**

- 2. Request: **VAR-99-02--A Variance from Section 60.090(4) to Allow a 130' High Wireless Telecommunication Tower with 16' Antennae Where a 100' High Support Structure and Antenna is Allowed in a Light Manufacturing (ML) Planning District**  
 Applicant: **John Silenzi, Nextel Communications and Dan Boss, City of Tualatin Operations Director**  
 Site: **10699 SW Herman Road - Tax Map 2S1 22A, Tax Lot 900**

**B. RECOMMENDATIONS FROM CITY ATTORNEY**

- c 1. Resolution No. \_\_\_\_\_ **Granting a Variance to Allow a 10' Setback of 10' Where 30' is Required in a Light Manufacturing (ML) Planning District at 18075 SW Boones Ferry Road (2S1 13ED, 1900) (VAR-99-01)**
- c 2. Resolution No. \_\_\_\_\_ **Approving the Transfer of the Solid Waste Franchise from United Disposal Service Inc. and Keller Drop Box Service to Allied Waste Industries Inc.**
- 3. Ordinance No. \_\_\_\_\_ **Vacating a Portion of SW Marilyn Street and SW 112<sup>nd</sup> Avenue**
- 4. Ordinance No. \_\_\_\_\_ **Vacating a 30' Public Right-of-Way on SW Marilyn Street**
- 5. Ordinance No. \_\_\_\_\_ **Vacating a Portion of SW 119<sup>th</sup> Avenue**
- 6. Ordinance No. \_\_\_\_\_ **Relating to Emergency Management; Delegating the Authority to Adopt and Amend the Emergency Management Plan to the City Manager; Amending TMC 1-7.020; Repealing TMC 1-7.030; and Rescinding Resolution Nos. 1789-86, 2714-92**
- 7. Ordinance No. \_\_\_\_\_ **Relating to Northwest Natural Gas Franchise; Correcting a Typographical Error; and Declaring an Emergency**

**C. RECOMMENDATIONS FROM PLANNING DIRECTOR - None Additional.**

**D. RECOMMENDATIONS FROM CITY ENGINEER**

- c 1. **Change Order No. 4 to the Contract Documents for the Construction of SW Tualatin Road**
- c 2. **Authorize City Engineer to Apply for 124<sup>th</sup> Avenue / Portland & Western (SPRR) Railroad Crossing Improvements**

**E. RECOMMENDATIONS FROM CITY MANAGER**

- c 1. **Approval of Minutes for the Meeting of November 22, 1999 and December 13, 1999**
- c 2. Resolution No. \_\_\_\_\_ **Approving Accounts Payable for Payment**
- c 3. **Liquor License - New - Oregon Grape and Gourmet**

OFFICIAL CALENDAR OF THE TUALATIN CITY COUNCIL FOR JANUARY 10, 2000

**F. RECOMMENDATIONS FROM COMMUNITY SERVICES DIRECTOR**

- c 1. Authorization to Proceed with Phase Two of Park and Recreation District Feasibility Study

**G. RECOMMENDATIONS FROM ECONOMIC DEVELOPMENT DIRECTOR**

- c 1. Resolution No. \_\_\_\_\_ Authorizing Acceptance of Deed of Dedication in Association with the Construction of SW 124<sup>th</sup> Avenue and SW Lave-ton Drive

5. **EXECUTIVE SESSION:** The Tualatin City Council may go into Executive Session under the provisions of ORS 192.660 (1)(a)(D) to discuss personnel; ORS 192.660 (1)(d) to discuss labor relations; ORS 192.660 (1)(e) to discuss real property transactions; or ORS 192.660 (1)(h) to discuss current and pending litigation issues. All discussions within this session are confidential; therefore nothing from this meeting may be disclosed by those present. Representatives of the news media are allowed to attend this session, but must not disclose any information discussed during this session.

**6. COMMUNICATIONS FROM COUNCILORS**

**OFFICIAL CALENDAR OF THE TUALATIN DEVELOPMENT COMMISSION**

The following is a summary of issues to come before the Commission at its regular session to be held on Monday, January 10, 2000 at 7:30 p.m. in the Council Building Council Chambers.

Resolution No. Begin with 338-00

**Time Limits for Public Hearings** - The purpose of time limits on testimony is to provide all interested persons with an adequate opportunity to present and respond to testimony while at the same time ensuring that the hearing can be conducted in an efficient and timely manner. All persons providing testimony shall be limited to 10 minutes, subject to the right of the Chairman to amend or waive the time limits.

1. **ANNOUNCEMENTS**

2. **OPEN MIKE** - For matters not appearing elsewhere on the agenda. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting. Please limit your comments to no more than 3 minutes. Total time allocated to OPEN MIKE is 15 minutes at the beginning of the meeting. If there is insufficient time to hear all those wishing to speak, the OPEN MIKE will be continued to the end of the agenda.

3. **CONSENT AGENDA** - Items marked with "c" are considered routine and are part of the consent agenda. The items have been discussed by the Commission in work session. They will be adopted by one motion unless a Commissioner or person in the audience requests, before the vote on the motion, to have an item considered at its regular place on the agenda.

4. **ACTION ITEMS**

A. **PUBLIC HEARINGS** - None.

B. **RECOMMENDATIONS FROM ECONOMIC DEVELOPMENT DIRECTOR**

- c 1. Change Order No. 6 to the Contract Documents for Construction of SW 124<sup>th</sup> Avenue / SW Leveton Drive
- c 2. Resolution No. \_\_\_\_\_ Authorizing Compensation for Dedication of Right-of-Way Associated with Construction of SW 124<sup>th</sup> Avenue and SW Leveton Drive
- c 3. Resolution No. \_\_\_\_\_ Authorizing Commencement of Negotiations to Acquire Rights-of-Way and Easements for the SW 124<sup>th</sup> Avenue / SW Leveton Drive to SW Myslony Street Improvements
- c 4. Resolution No. \_\_\_\_\_ Approving a Certificate of Completion for Tracts 6C and 6D (Villas on the Lake III) at Tualatin Commons

C. **RECOMMENDATIONS FROM ADMINISTRATOR**

- c 1. Approval of Minutes of the November 22, 1999 meeting and December 13, 1999 meeting
- c 2. Approving Accounts Payable for Payment

5. **EXECUTIVE SESSION**: The Tualatin Development Commission may go into Executive Session under the provisions of ORS 192.660(1)(a)(D) to discuss personnel; ORS 192.660 (1)(d) to discuss labor relations; ORS 192.660 (1)(e) to discuss real property transactions; or ORS 192.660 (1)(h) to discuss current and pending litigation issues. All discussions within this session are confidential; therefore nothing from this meeting may be disclosed by those present. Representatives of the news media are allowed to attend this session, but must not disclose any information discussed during this session.

6. **COMMUNICATIONS FROM COMMISSIONERS**

**City of Tualatin, Oregon  
COUNCIL AGENDA STATEMENT**

A 2

Meeting Date January 10, 2000

Agenda Item No. \_\_\_\_\_

**Item Title**

**VAR-99-02—A VARIANCE FROM SECTION 60.090(4) TO ALLOW A 130' HIGH WIRELESS TELECOMMUNICATION TOWER WITH 16' ANTENNAE WHERE A 100' HIGH SUPPORT STRUCTURE AND ANTENNA IS ALLOWED IN A LIGHT MANUFACTURING (ML) PLANNING DISTRICT AT 10699 SW HERMAN ROAD ON TAX MAP 251 22A, TAX LOT 900.**

**Prepared by** Jim Jacks



**Department** Planning

**Explanation**

This is a quasi-judicial land use decision. This application requests a variance to the allow a 130' high wireless communication monopole tower and 16' antennae on the City of Tualatin Operations Center property. The significant issues of the proposal are:

- Nextel Communications (Nextel) seeks to expand its wireless communication network in the Tualatin area and proposes to construct a wireless communication facility (monopole tower, antennae and equipment shelter) on a leased area of the City of Tualatin Operations Center. Nextel is negotiating with the City of Tualatin to lease a 3,600 s.f. area on the northeast corner of the property.
- The site is in a ML Planning District which allows a wireless communication facility as a permitted use. The maximum allowed height is 100' in the ML District.
- The site is in an existing industrial area and located approximately 1,400' from residential areas north of SW Tualatin Road. On the site is grove of 100' - 120' high conifer trees. The site was chosen for its location in an industrial area, distance from residential areas and for the buffering that the tall trees would provide for a tower and antennae.
- Because the radio signals to and from the antennae are blocked by trees and limbs, the proposed monopole tower and antennae must be taller than the nearby trees. This variance is needed to allow the antennae to be a height of up to 146' and be higher than the 100'-120' trees.
- Locating the tower and antennae in the grove of trees will screen and buffer the facility from nearby properties. No injury to adjoining properties is anticipated. The proposed facility will require the removal of six conifers so that the tower and equipment shelter can be constructed.

**Applicant:** John Silenzi, Nextel Communications and Dan Boss, City of Tualatin Operations Dir.

**Special Issues**

The statutory 120<sup>th</sup> day which a decision must be made is March 28, 2000. This hearing is on day 42.

**Financial Statement**

Not applicable

**Account No.** Not applicable

**Recommendation**

Staff recommends the City Council adopt the staff report and direct staff to prepare a resolution granting VAR-99-02, with the following condition:

1. The monopole tower, antenna platform and whip antennae shall not exceed 146 ft. in height above grade.

SW

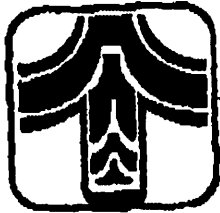
**Board/Commission Recommendation**

Not applicable

**Attachments (Listed Below)**

Staff Report, 1)Applicant's Reasons, 2)Vicinity Map & Site Plan, 3)Elevations, 4)Photo Simulation

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# CITY OF TUALATIN

PO BOX 369  
TUALATIN, OREGON 97062-0369  
(503) 692-2000  
TDD 692-0574

January 10, 2000

City Council  
City of Tualatin

Members of the Council:

**VAR-99-02--A VARIANCE FROM SECTION 60.090(4) TO ALLOW A 130' HIGH WIRELESS TELECOMMUNICATION TOWER WITH 16' ANTENNAE WHERE A 100' HIGH SUPPORT STRUCTURE AND ANTENNA IS ALLOWED IN A LIGHT MANUFACTURING (ML) PLANNING DISTRICT AT 10699 SW HERMAN ROAD ON TAX MAP 2S1 22A, TAX LOT 900**

## REQUEST

On November 29, 1999, the City of Tualatin received an application for a variance request from Sections 60.090(4) of the Tualatin Development Code (TDC) to allow a 130 foot wireless communication monopole tower with up to 16 ft. of antennae for a total height of up to 146 ft. The proposed site is a 3,600 square foot lease area on the City of Tualatin Operations Center subject property located in the Light Manufacturing (ML) Planning District at 10699 SW Herman Road.

## APPLICANT'S REASONS

The applicant's reasons and supporting material are made a part of this staff report (Attachment 1).

## BACKGROUND

The co-applicants are John Silenzi representing Nextel Communications (Nextel) and Dan Boss, City of Tualatin Operations Director. Nextel seeks to expand its wireless communication network (Enhanced Specialized Mobile Radio, ESMR) coverage in the western area of Tualatin, Tigard and King City and along the I-5 corridor. Nextel identified the Operations Center property at 10699 SW Herman Road as a prospective wireless site. The Operations Center site offers a location for a wireless facility in an industrial area approximately 1,400 ft. or more away from the nearest residential areas north of Tualatin Road and with the proper antenna height, will provide an adequate radio frequency (RF) signal coverage in this geographic area. The site features a grove of over fifty 100'-120' (approximately) tall conifers (primarily Douglas Fir) that provide a natural buffer and screen for a monopole from nearby properties, public streets and residential areas (Attachments 1- 4).

**ARRANGEMENTS CAN BE MADE TO PROVIDE THESE MATERIALS IN ALTERNATIVE FORMATS, SUCH AS LARGE TYPE OR AUDIO CASSETTE TAPE. PLEASE CONTACT THE PLANNING DEPARTMENT AND ALLOW AS MUCH LEAD TIME AS POSSIBLE.**



A-2

**VAR-96-02— Variance to allow a 146 ft. Wireless Communication Tower in a ML District**  
**January 10, 2000**  
**Page 2**

Nextel has entered into negotiations with the City of Tualatin to lease a 3,600 s.f. (60' x 60') area on the vacant northeast corner of the Operations Center property for a tower, equipment shelter, landscaping, security fencing and access for construction and maintenance. The City as the landowner desires to retain the large conifer trees on the subject portion of the Operations Center property and requires that development such as the proposed communications facility disturb as few conifer trees on the site as possible. The applicant states that wireless RF signals must travel in an unobstructed path from the facility to the user. Because the tower and antennae are proposed to be located in the grove of 100'-120' tall conifers and the City as the property owner does not wish to have the obstructing trees removed, the antennae must be at a height greater than the height of the neighboring trees (with consideration of the future growth of the trees).

The applicant was informed in pre-application meetings that a variance would be needed to allow a wireless communication support structure and antennae greater than 100' in height (as per TDC 60.090(4)). Architectural Review of the facility including tower design, access, fencing, tree preservation and landscaping is required following variance approval. To meet the siting and engineering requirements for a wireless facility at this location, Nextel proposes a 130 ft. monopole structure with three 16 ft. omni whip antennae attached at the top of the monopole. In addition to the proposed omni antennae, future expansion may also include two 6 ft. diameter microwave dishes, and twelve 5' panel antennae located on a platform at the top of the tower (Attachment 3). The submittal shows that six conifers are proposed for removal to allow construction of the tower. The remaining 50 or more trees in this portion of the property would not be disturbed.

**ANALYSIS AND FINDINGS**

1. **Variance Criteria:** Section 33.020 of the TDC authorizes the City Council to grant a variance from the requirements of the Code when it is shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of the ordinance would cause an undue hardship. In granting a variance, the City Council may attach conditions that it finds necessary to protect the best interests of the surrounding property and to meet the purposes of the Code.

No variance shall be granted by the City Council unless it can be shown that criterion (1) is met and three of the four approval criteria (2)-(5) are met. The burden is upon the applicant to demonstrate that each of the following criteria exist:

- (1) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district or vicinity, and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control.
- (2) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances such as age or financial situation of the applicant, or from regional economic conditions.
- (3) The variance is necessary for the preservation of a property right of the applicant or owner substantially the same as is possessed by owners of other property in the same planning district or vicinity.
- (4) The variance shall not be detrimental to the applicable objectives of the Tualatin Community Plan and shall not be injurious to property in the planning district or vicinity in which the property is located.
- (5) The variance is the minimum remedy necessary to alleviate the hardship.

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**VAR-96-02— Variance to allow a 146 ft. Wireless Communication Tower in a ML District**  
January 10, 2000  
Page 3

2. Criterion (1). A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district or vicinity, and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control.

Nextel identifies the hardship as the existing conifer trees on the Operations Center property and outlines why the site has exceptional or extraordinary circumstances (Attachment 1 pp. 4-5). One reason is the proposed location of the wireless facility on this site in the ML Planning District. Nextel seeks a location in the western portion of Tualatin, Tigard and King City area. Both Nextel and the City of Tualatin desire to locate a facility such as the proposed telecommunications tower and antennae in an industrial area and in a location that minimizes visual impacts on residential areas. Wireless facilities such as Nextel utilizes are a permitted use in the ML and MG (General Manufacturing) Planning Districts [TDC 60.020(39), 61.020(1)], but are restricted in residential planning districts in Tualatin. Siting the facility in an industrial area such as the ML district is the preferred location.

The Operations Center site offers a location that with the proper height will provide an adequate radio frequency (RF) signal coverage in this geographic area and is located in an industrial area approximately 1,400 ft. or more away from residential areas north of Tualatin Road. The importance of locating the facility in an industrial district with 1,400 ft. of distance to the nearest residential property is an exceptional circumstance that applies to the property.

Another reason why this cellular tower needs to be 146 feet is outlined in the Project Description section of the application (Attachment 1, pp. 2-3). Nextel explains that "the design of a specific ESMR site is further refined by considering local topographic and geographic factors, tree canopy, water bodies and the ability to mitigate the antenna support structure's visual impact, compatibility of the facility with existing uses..." (Attachment 1 pg. 3). With these and other technical factors evaluated by the applicant's engineers, Nextel indicates that the 130 foot tall monopole (and antenna) at this site is the minimum necessary to provide adequate radio coverage to the surrounding area. Staff agrees that existing elevation and presence of trees at this site present a hardship and is an exceptional circumstance.

The grove of 100'-120' tall conifers on the site provide a natural buffer and screen for a telecommunication facility (See Attachment 4, Photo simulation of the proposed tower siting in the tree grove). Tall trees such as on the subject property will obscure the tower and visually mitigate the tower and antennae for persons viewing it from off site and from residential areas to the north. With the benefit of the trees comes the hardship imposed by trees interfering with a RF signal and by the need to have a direct "line of sight" from the antenna to the wireless user. A facility located in the vicinity of trees such as the Operations Center grove must be taller than the 100'-120' tall trees to operate effectively. The applicant states that the height of the trees makes it impossible to build a monopole and antenna within the 100' height limit. The height of the trees is an exceptional circumstance and creates the hardship.

Only a few of the properties in the ML or MG Districts in the western areas of Tualatin have a grove of tall conifers such as exists on the subject property. To locate the facility on a treeless site would forgo the visual buffering that the trees would provide for a tower and antenna structure. The City of Tualatin is a "Tree City USA" and as the property owner is guided by policies for preserving trees in TDC Chapters 15, 73 and 74 and the Operations Center Master Plan. Removal of the grove of trees to facilitate a development such as the proposed Nextel facility and

A-2

**VAR-96-02— Variance to allow a 146 ft. Wireless Communication Tower in a ML District**  
January 10, 2000  
Page 4

avoid a variance for increase structure height is not a responsible or desirable solution for the City as a property owner. The physical circumstances of needing an unobstructed signal from a wireless tower and the requirement for retaining the grove of trees are not in the control of the applicant or property owner.

To minimize disruptions to traffic circulation and other current or planned activities on the Operations Center site, the facility needs to be located on the northeastern most edge of the property. Staff agrees that the requested location on the site would be the least disruptive to the existing and planned operations activities on the site.

The property has exceptional or extraordinary conditions due to the need to locate the wireless facility in an industrial district and removed from residential areas and the physical circumstances of the 110'-120' tall conifer trees on the site. The condition does not apply generally to other properties in the vicinity or in the ML Planning District.

Criterion "1" is met.

3. Criterion (2). The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances such as age or financial situation of the applicant, or from regional economic conditions.

The applicant indicates that no hardship was created by the applicant, owner or previous owner and is a result of the natural physical conditions on the site (Attachment 1, pg. 5). The 100'-120' tall trees on the site prevent building the tower within the 100' height limit.

Staff agrees that the topography of the area and trees on this site require a tower greater than the 110'-120' height and are responsible for the applicant's need for a variance from the height requirements of the TDC. The hardship is not a result of personal circumstances or financial situation of the applicant or owner. Regional economic conditions are not a factor in this proposal.

Criterion "2" is met.

4. Criterion (3). The variance is necessary for the preservation of a property right of the applicant or owner substantially the same as is possessed by owners of other property in the same planning district or vicinity.

The property is in the ML Planning District. Surrounding properties and uses are:

- N: ML, Crystal Lite Manufacturing
- E: ML, Jana's Cookies  
ML, Airefco
- S: MG, Kem Equipment, Marshall Associated Industries (Across SW Herman Rd. and the SPRR tracks)
- W: ML, Dot Storage  
ML, Contractors Offices (Across SW 108<sup>th</sup> Avenue)

The applicant indicates the variance is necessary because Nextel would be denied the right to operate a wireless facility that is permitted by other property owners in the ML district (Attachment 1, pg. 5). The applicant states that the maximum structure height in the ML district must be exceeded "... so that the antennas can transmit in an unobstructed path free and clear of the surrounding trees."

A-2

**VAR-96-02-- Variance to allow a 146 ft. Wireless Communication Tower in a ML District**  
**January 10, 2000**  
**Page 5**

A wireless facility is allowed as a permitted use in the ML district. There are no other wireless facilities in the vicinity of the proposed Nextel site at this time, but other facilities such as the AT&T facility on the Northwest Natural Gas property on SW McEwan Road are located in the ML District. Staff concurs with the applicant that the variance is necessary to preserve the property right of the applicant. The presence of the tall conifer trees on the site provide buffering and mitigation of a tower and are a substantial reason for locating on the Operations Center property and not locating somewhere else in the ML District.

This variance is necessary to preserve the owner's property right the same as provided to other property owners in the ML District.

Criterion "3" is met.

- 5. Criterion (4). The variance shall not be detrimental to the applicable objectives of the Tualatin Community Plan and shall not be injurious to property in the planning district or vicinity in which the property is located.

The applicant chose not to address Criterion "4" in the application materials.

The objectives for Wireless Communication Facilities in TDC Chapter 8, Public, Semi-public and Miscellaneous Land Uses (TDC 8.060) include:

- (1) To minimize the visual impacts associated with wireless communication facilities.
- (2) To provide a wide range of locations for wireless communication facilities.
- (3) To encourage creative approaches in locating wireless communication facilities that will blend with their surroundings.

The location and siting of the proposed Nextel tower will minimize the visual impact of the facility by blending in with the trees and the tower's surroundings and meets Objectives 1 and 3. The Operations Center location is a publicly owned property in a ML District and is part of a wide range of locations for the wireless communication facility.

Criterion "4" is met.

- 6. Criterion (5). The variance is the minimum remedy necessary to alleviate the hardship.

The applicant states "At this location, the height of the existing trees is the reason why Nextel is asking for a variance to exceed the height limit. The proposed 146' is the minimum height required to provide adequate radio coverage to the surrounding area." (Attachment 1, pg. 5).

Staff has inspected the site and reviewed USGS topographic maps to determine if a height of less than 146' is workable. The site's base elevation is approximately 135'. The applicant indicates that the height of the trees is approximately 100'-120'. The area north of the site north of SW Tualatin Road has a ground elevation of approximately 165'-170'. The higher areas southeast and east of the site in the vicinity of downtown Tualatin have a ground elevation of 190'-250'. With the existing height of the trees in the Operations Center grove at 100'-120', the tower and antennae must be taller than the 100' maximum requirement of TDC 60.090(4).

The elevation drawings show a 130' monopole and antennae up to a height of 146'. (Attachment 3). The drawings show the trees at heights of up to 120', accounting for a slow increase in height with future growth (Attachment 4). Staff agrees the monopole and antennae must be higher than the trees for future growth. Given the

A-2

**VAR-99-02— Variance to allow a 146 ft. Wireless Communication Tower in a ML District**  
January 10, 2000  
Page 6

trees are estimated at 100'-120' in height, the proposed 146' height is the minimum necessary. To satisfy this criterion, the monopole tower, antenna platform and whip antennae shall not exceed 146 ft. in height above grade.

Criterion "5" is met.

- 7. Based upon the application and above findings and analysis, the approval criteria of Section 33.020 have been met.

**RECOMMENDATION**

Staff recommends the Council adopt the staff report and direct staff to prepare a resolution granting VAR-99-02 with the following condition:

- 1. The monopole tower, antenna platform and whip antennae shall not exceed 146 ft. in height above grade.

Respectfully submitted,

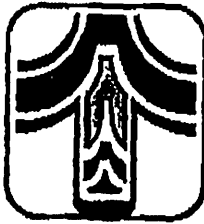


William Harper, AICP  
Associate Planner

- Attachments:
- 1. Applicant's Supporting Materials
  - 2. Vicinity Map and Site Plan
  - 3. Elevation Drawings
  - 4. Photos of Simulated Tower Elevations

c: John Silenzi, Westtower Communications

file: VAR-99-02



# CITY OF TUALATIN

PO BOX 369  
TUALATIN, OREGON 97062-0369  
(503) 692-2000  
TDD 692-0574

## SITE COPY

**PLUMBING:  
SITE UTILITIES:**

*NATEL*

1. All non-metallic underground yard piping, shall have an 18 gauge or heavier tracer wire along pipe in trench, green for sanitary and storm water piping. UPC 718.2 & 1106.1. blue for water main service piping, UPC 609.5.1
2. Piping for storm and sanitary sewer drainage shall be of approved materials within 5" of buildings including porches and steps whether covered or not. UPC 1104.1 and 718.3
3. Building sewer and storm piping shall be run in practical alignment at a uniform slope. of  $\frac{1}{4}$ " per foot, where it is impractical to obtain a  $\frac{1}{4}$ " per foot slope, pipe grade maybe reduced to 1% or  $\frac{1}{8}$ " per foot upon request to the Building Dept. UPC 708.0
4. Catch Basins shall be lynch type. In standard 24" catch basins outlets are to be a maximum of 6", if larger outlets are required, a drawing and specifications shall be submitted to the Building Dept. for approval. UPC - 1108

## CITY OF TUALATIN APPROVED PLANS

PERMIT NO. 00-444 DATE: 5/3/00

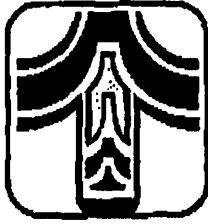
ADDRESS: 10699 SW HERMANN RD

APPROVED BY: ML

## SITE COPY

This drawing is to be kept on  
the Building Site at all times

LOCATED AT: 18880 SW Martinazzi Avenue



## **CITY OF TUALATIN**

PO BOX 369  
TUALATIN, OREGON 97062-0369  
(503) 692-2000  
TDD 692-0574

### **NOTICE OF ADOPTION**

On January 24, 2000, the City of Tualatin adopted Resolution #3672-00 (File No. VAR-99-02) granting a variance to allow a 130' high wireless telecommunication tower with 16' antenna where a 100' high support structure and antenna is allowed in a light manufacturing (ML) planning district at 10699 SW Herman Road (2S1 22A, 900). A copy of the resolution is enclosed for review.

A copy of the resolution is also available for review at the Tualatin Planning Department located at 18884 SW Martinazzi Avenue from 8 a.m. to 12 noon and from 1 to 5 p.m., Monday through Friday.

Appeal of land use decisions is commenced by filing a Notice of Intent to Appeal with the Land Use Board of Appeals as provided in ORS 197.830 to 197.845. The notice of intent to appeal a land use decision must be filed no later than 21 days after the date the decision sought to be reviewed becomes final.

Date notice mailed: January 28, 2000

cc: ✓ Sean Bell, NEXTEL Communications, 8405B SW Nimbus Avenue, Beaverton OR 97008  
Daniel J. Boss, Operations Director, City of Tualatin, PO Box 369, Tualatin OR 97062-0369

File: VAR-99-02  
10699 SW Herman Road

LOCATED AT: 18880 SW Martinazzi Avenue

RESOLUTION NO. 3672-00

A RESOLUTION GRANTING A VARIANCE (VAR-99-02) TO ALLOW A 130' HIGH WIRELESS TELECOMMUNICATION TOWER WITH 16' ANTENNA WHERE A 100' HIGH SUPPORT STRUCTURE AND ANTENNA IS ALLOWED IN A LIGHT MANUFACTURING (ML) PLANNING DISTRICT AT 10699 SW HERMAN ROAD ON TAX MAP 2S1 22A, TAX LOT 900.

WHEREAS a public hearing was held before the City Council of the City of Tualatin on January 10, 2000, upon the application of Nextel Communications and the City of Tualatin, for a variance from TDC 60.090(4) to allow a 130' high structure and 16' antenna in a Light Manufacturing (ML) Planning District at 10699 SW Herman Road (Tax Map 2S1 22A, Tax Lot 900); and

WHEREAS notice of public hearing was given as required by the Tualatin Development Code by posting the notice in two public and conspicuous places, which is evidenced by the Affidavit of Posting, marked "Exhibit A", attached and incorporated by this reference, and by mailing a copy of the notice to property owners located within 300 feet of the property, which is evidenced by the Affidavit of Mailing, marked "Exhibit B," attached and incorporated by this reference; and

WHEREAS the Council heard and considered the testimony and evidence presented on behalf of the applicant, the City staff, and those appearing at the public hearing; and

WHEREAS based upon the evidence and testimony heard and considered by the Council, the Council makes and adopts as its findings of fact the City staff report, dated January 10, 2000, which is marked "Exhibit C," attached and incorporated by reference; and

WHEREAS after the conclusion of the public hearing the Council vote resulted in approval of the application with all Councilors voting in favor, and all Councilors present; and

WHEREAS based upon the foregoing Findings of Fact the Council finds that the applicant has provided sufficient evidence to demonstrate that all of the requirements of the Tualatin Development Code relative to a variance have been satisfied and that granting the variance is in the best interest of the residents and inhabitants of the City, the applicant, and the public generally.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

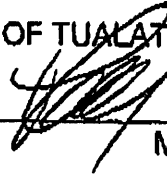


Section 1. Nextel Communications and the City of Tualatin are granted a variance to allow a 130' high wireless telecommunication tower with 16' Antenna at 10699 SW Herman Road in a Light Manufacturing (ML) Planning District, also described on the records of Washington County Department of Assessment and Taxation as Tax Map 2S1 22A, Tax Lot 900.

INTRODUCED AND ADOPTED this 24<sup>th</sup> day of January 2000.

CITY OF TUALATIN, Oregon

By



Mayor

ATTEST:

By



City Recorder



November 16, 2017

RE: PI Tower Development Project OR—Tualatin Durham / 10290 SW Tualatin Rd

To Whom It May Concern:

My name is Micah Hawthorne and I am a Principal Sales Engineer at American Tower with an RF Engineering background. My resume has been provided in support of this statement.

Per Verizon Wireless' application, American Tower Corporation has an existing tower structure that would produce "marginal coverage in residential area due to surrounding trees." This tower is less than 750 ft. at 10318 SW Herman Road (Exhibit A). The RF coverage analysis of the immediate area (attached slides) supports Verizon Wireless claim if they were to install below the existing tenant at a proposed height of 110 ft., there would be significant impact to the coverage area due to exiting tree clutter up to a canopy height of 130 ft.

The coverage scenario with no tree clutter reflects tree clearance within the nearest ~155 ft. A clearance distance of 100 ft. would produce coverage in between the two 110 ft. tree clutter scenarios in both the 700 MHz and AWS 1700/2100 MHz respective examples.

With stated interest from T-Mobile and Verizon, the attached slides also suggest that Verizon, and thereby T-Mobile with operations in similar frequency bands, may be able to achieve their coverage objectives if the existing ATC 308345 tower structure were height modified to support both tenants. A 20 to 30 ft. increase in structure height would provide clearance over the existing trees at 130 ft., drastically improving the area coverage opportunity.

If an extension were approved to 150 ft. (or 160 ft. ), to support 2 (or 3) of the remaining 3 carriers from the Big 4 that are not currently installed on this asset, there might be limited future need for additional structures of similar height.

Micah T Hawthorne,

Principal Sales Engineer



**AMERICAN TOWER®**  
CORPORATION

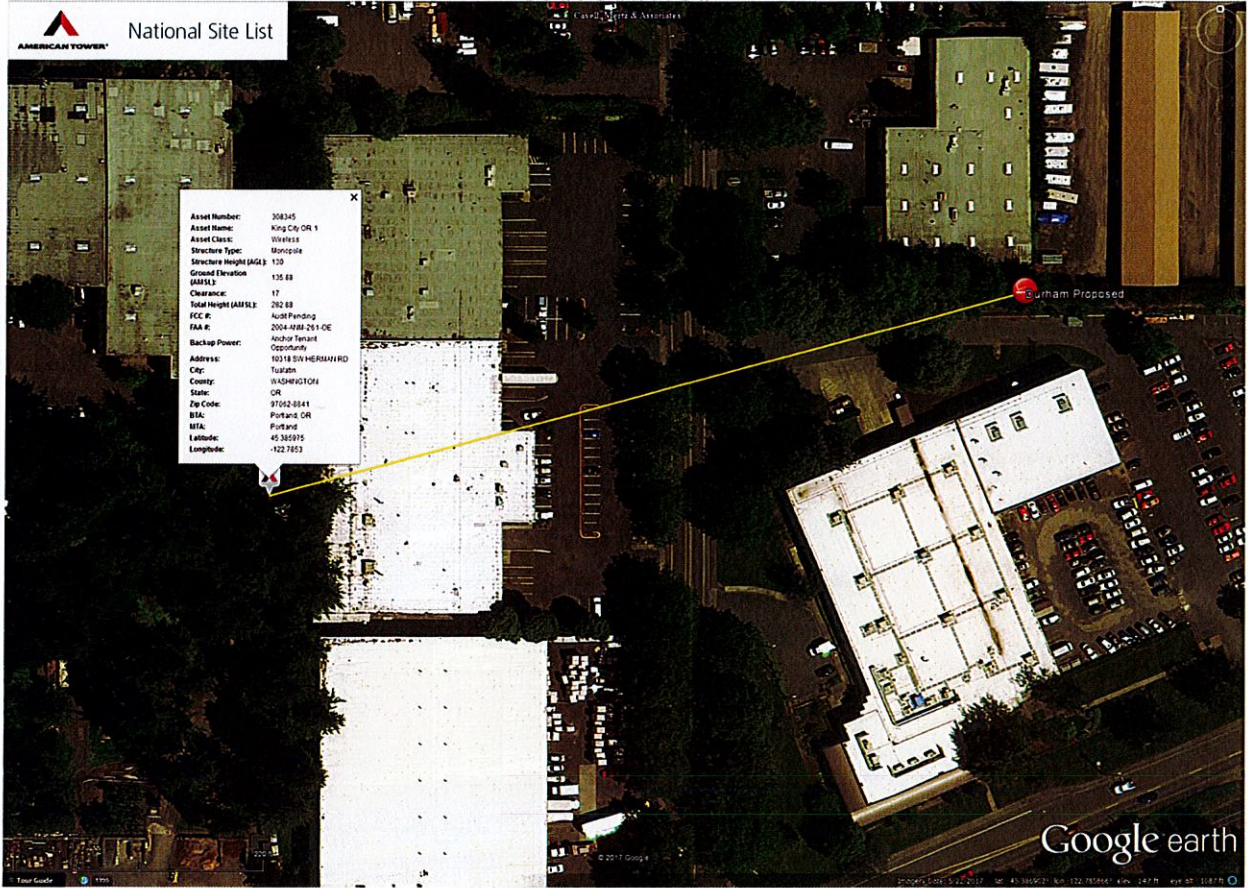
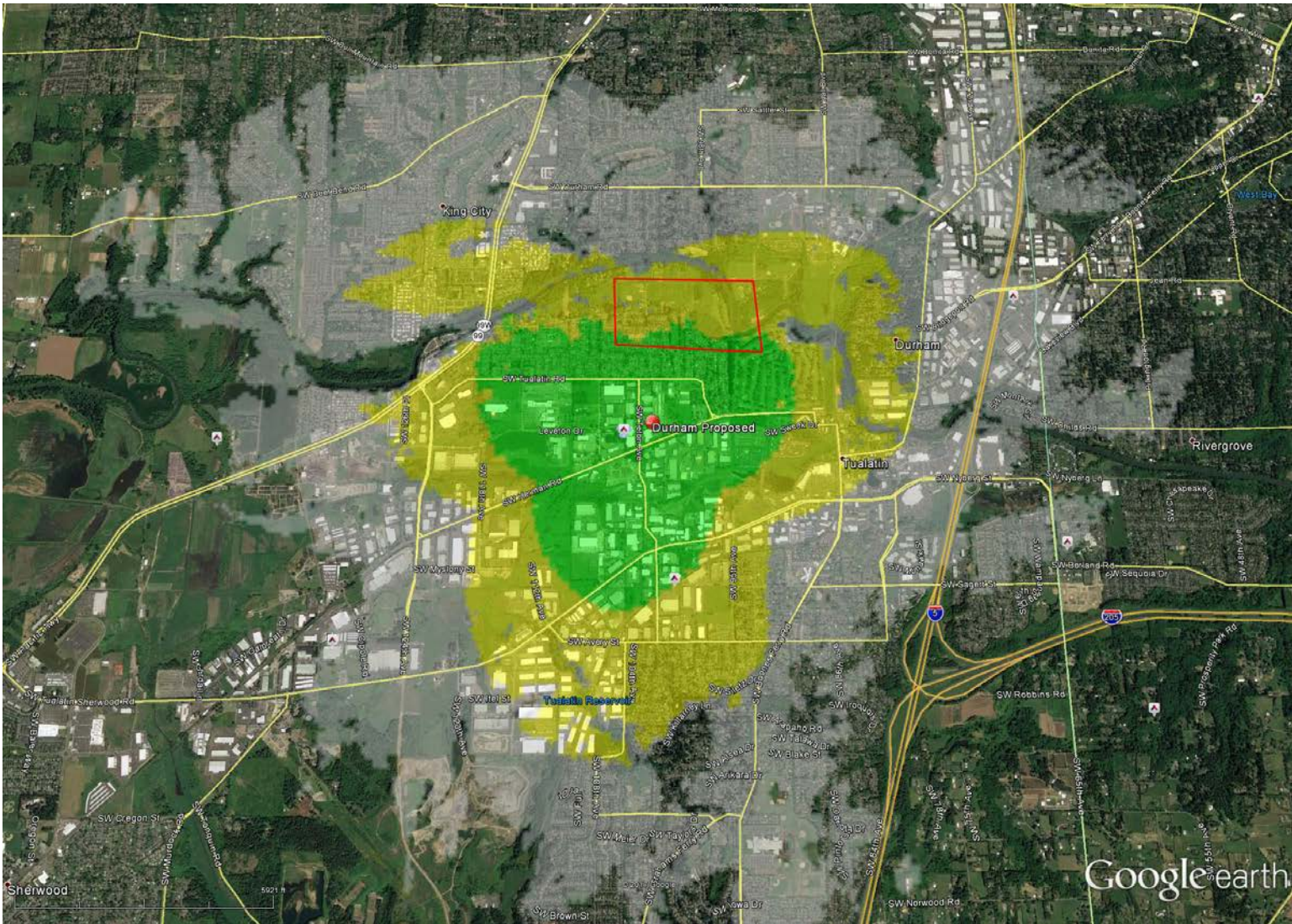
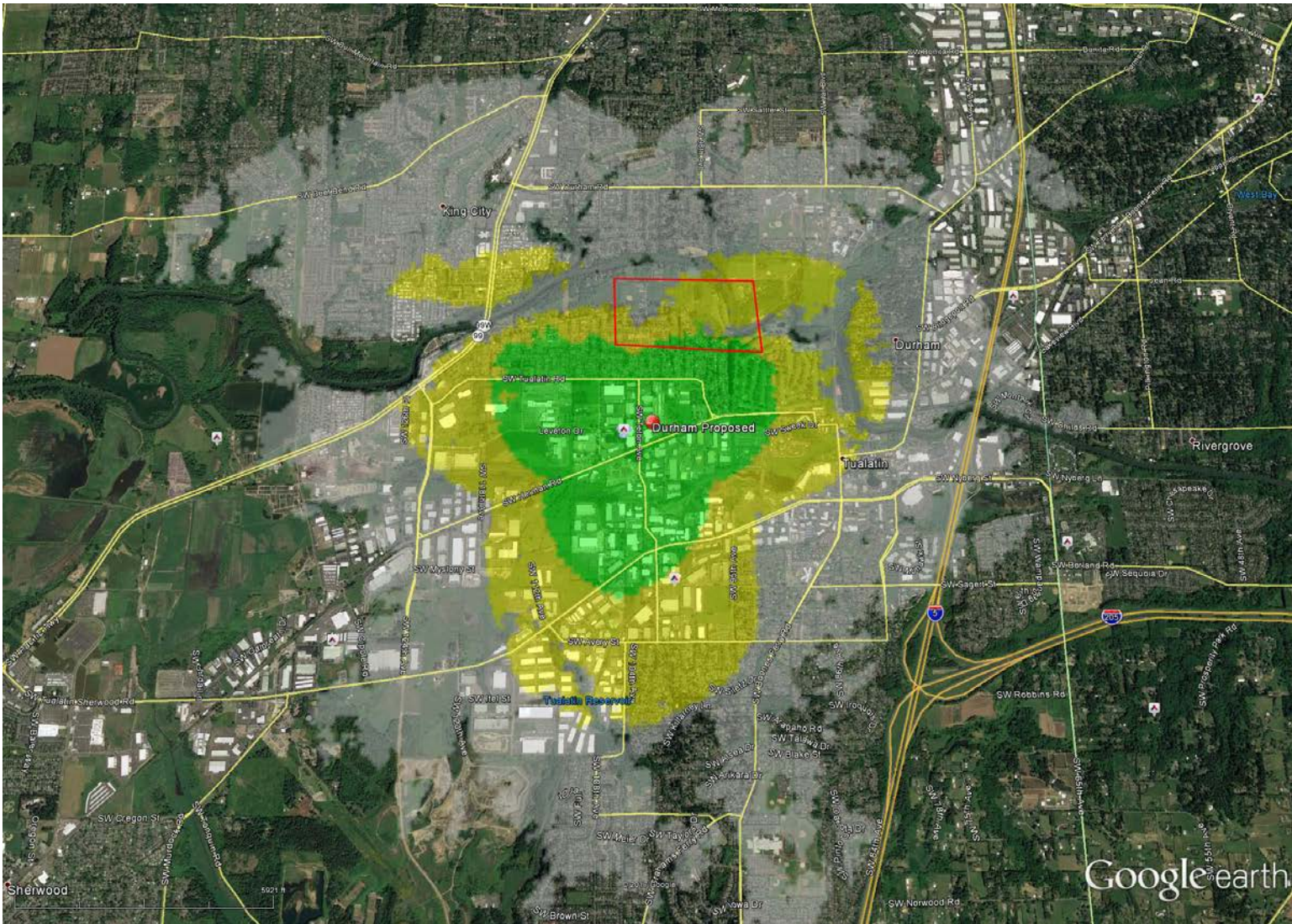


Exhibit A. ATC 308345 is approximately 750 ft. from the 10290 SW Tualatin Road location.

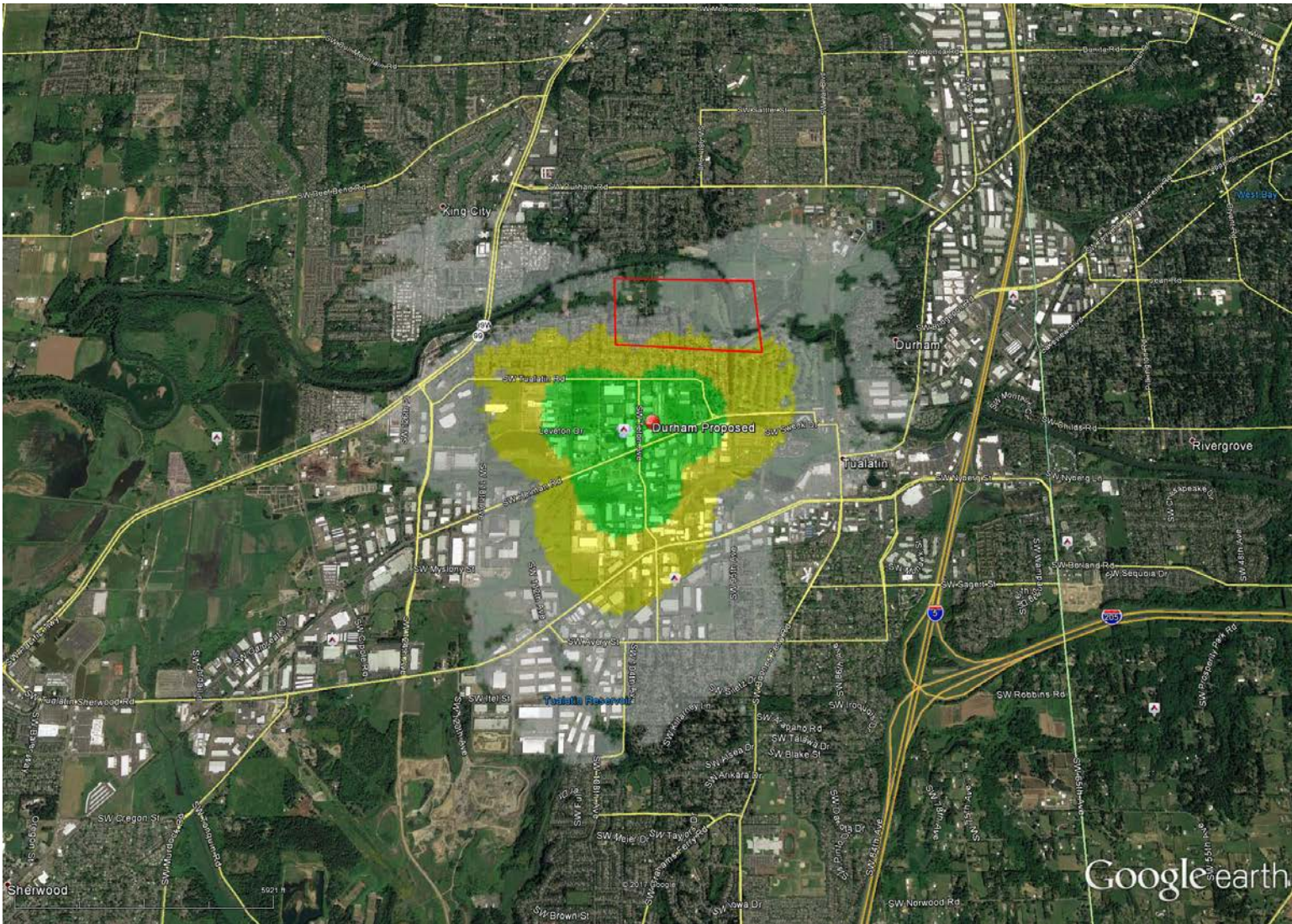
# 308345 700 MHz LTE Coverage: @ 150 ft. with NO Tree Clutter



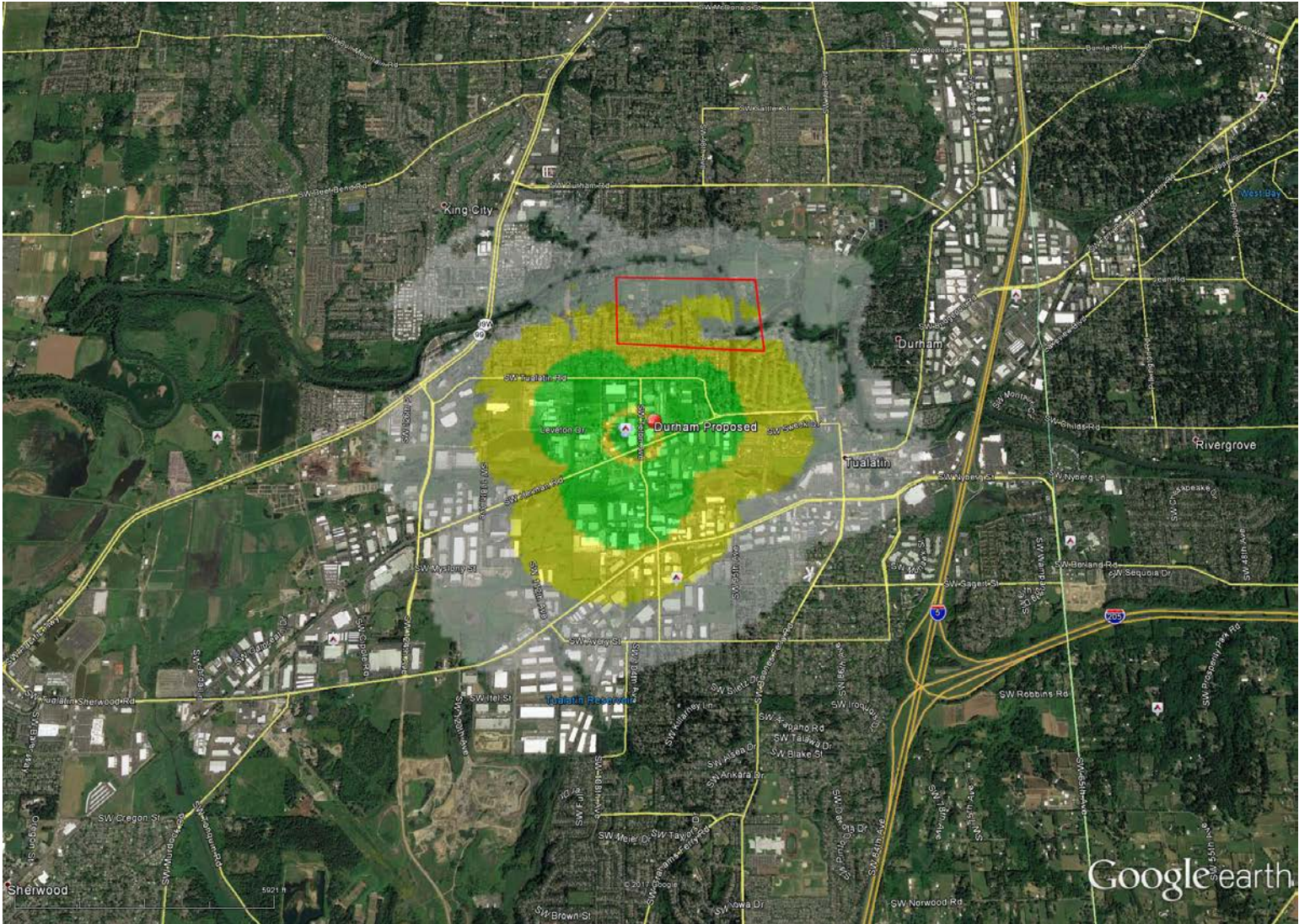
# 308345 700 MHz LTE Coverage: @ 110 ft. with NO Tree Clutter



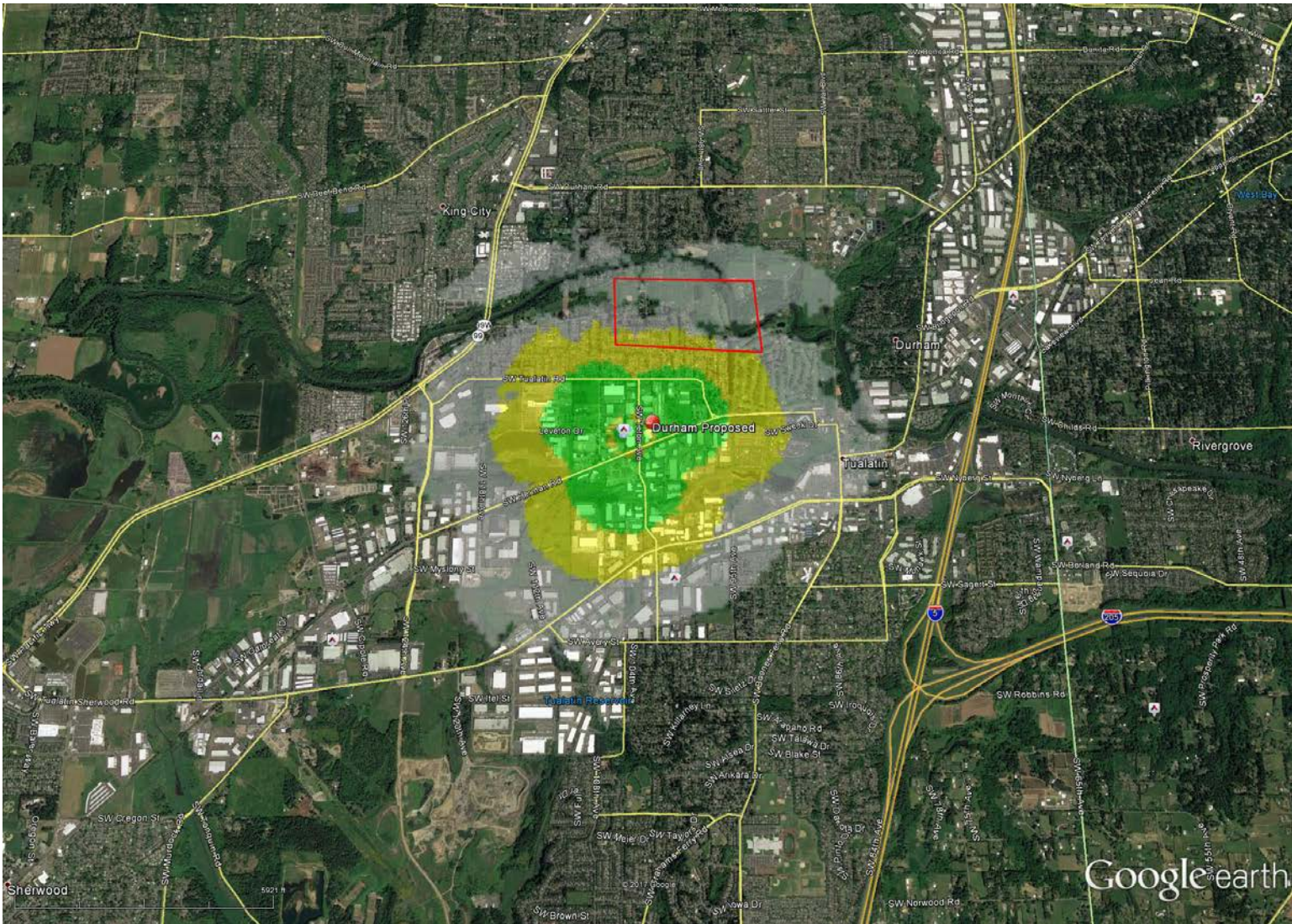
# 308345 700 MHz LTE Coverage: @ 110 ft. with Tree Clutter



# 308345 2100 MHz (AWS) LTE Coverage: @ 150 ft. with NO Tree Clutter

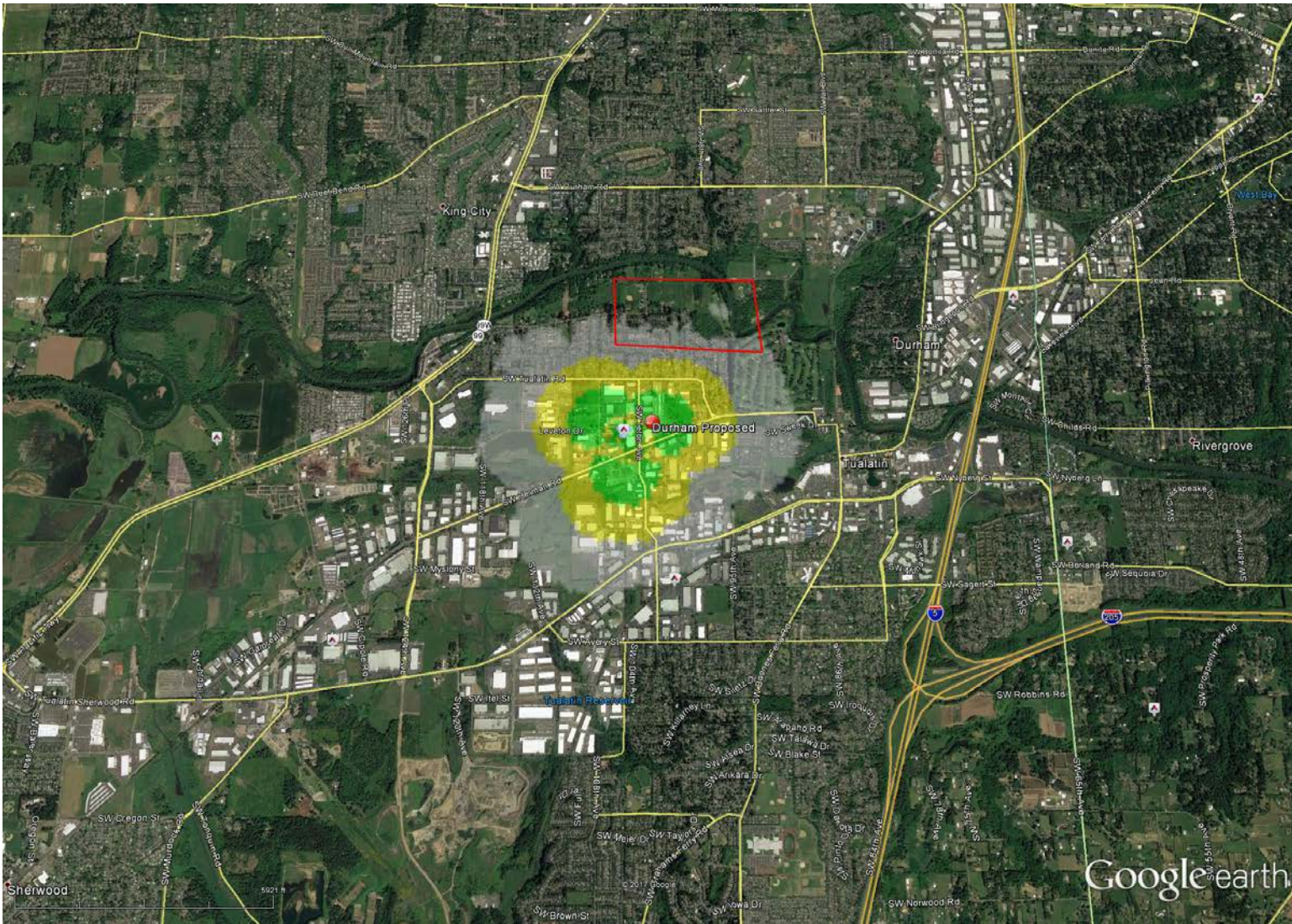


# 308345 2100 MHz (AWS) LTE Coverage: @ 110 ft. with NO Tree Clutter





# 308345 2100 MHz (AWS) LTE Coverage: @ 110 ft. with Tree Clutter







# HATHAWAY LARSON

Koback · Connors · Heth

November 22, 2017

**VIA EMAIL**

Planning Commission  
City of Tualatin  
Attn: Aquilla Hurd-Ravich  
18880 SW Martinazzi Avenue  
Tualatin, OR 97062  
[ahurd-ravich@tualatin.gov](mailto:ahurd-ravich@tualatin.gov)

Re: Variance for Wireless Communications Facility - 10290 SW Tualatin Rd.  
Application No. VAR-17-0001  
Response to American Tower Corporation Submission

Dear Commissioners:

This firm represents the applicant for the above-referenced matter, Lendlease (US) Telecom Holdings, LLC, c/o PI Tower Development, LLC, Verizon Wireless and the property owner (the "Applicant"). We are submitting this letter and the enclosed material in response to the written and oral submissions by American Tower Corporation ("ATC") at the November 16, 2017 public hearing arguing that the variance application should be denied on the grounds that ATC's existing tower (the "ATC Tower") can accommodate the proposed wireless communications facility if certain modifications are made and additional approvals are obtained. The Applicant disputes ATC's claim for several reasons.

**A. The City code does not require the applicant to consider an existing tower that would require additional permits or approvals, or at least those that have not yet been filed.**

ATC acknowledged that "the existing ATC Tower is not suitable for colocation of additional carriers because of interference from the trees surrounding the site," but it claims that the ATC Tower could be used by the Applicant, if one of two modifications were made to the tower. Both modifications would require ATC to submit and obtain a permit and other approval in order to make these modifications. First, ATC claims that it could remove the existing trees within a 155-foot radius of the ATC Tower if it obtained a tree removal permit and the approval of the City as the property owner. Second, ATC claims that it could increase the height of the 130-foot tower by approximately 20 feet if it obtained an approval of a variance to further exceed the allowed height of

**E. Michael Connors**  
1331 NW Lovejoy Street, Suite 950  
Portland, OR 97209  
[mike@hathawaylarson.com](mailto:mike@hathawaylarson.com)  
(503) 303-3111 direct  
(503) 303-3101 main

the tower.<sup>1</sup> ATC claims that it is “feasible” to obtain the necessary permits and approvals for these options, but it provided no analysis or evidence to support this claim.

Regardless of whether or not it is feasible for ATC to obtain the necessary permits and approvals for these options, the Applicant is not required to consider the ATC Tower under the applicable approval criteria for two reasons. First, neither the tower separation nor variance criteria require the Applicant to consider existing towers that would require additional permits or approvals to accommodate the wireless communications facility. Second, to the extent the Applicant is required to consider existing towers that would require additional permits or approvals, it is only required to consider those for which the permit application has already been filed. Since ATC had not filed an application for the tree removal permit or variance by the time the Applicant filed this variance application, the ATC Tower cannot be used as a basis for denying the variance application in this case.

ATC claims that the Applicant must consider existing towers within 1,500 feet that could accommodate the wireless communications facility if additional City permits or approvals were obtained, but it fails to point to any language in the applicable sections of the Tualatin Development Code (“TDC”) to support this assertion. Neither TDC 73.470(9), which contains the 1,500-foot separation requirement, nor the variance criteria for tower separation in TDC 33.025(1) require an applicant to consider an existing tower that must obtain additional permits and approvals in order to accommodate the wireless communications facility. TDC 33.025(1)(a)(ii) requires documentation that existing towers within 1,500 feet “cannot be modified to accommodate another provider,” but it does not require the applicant to consider modifications that would require additional permits and approvals from the City. ATC’s interpretation requires the City to insert additional terms or requirements that are not expressly set forth in TDC 73.470(9) or TDC 33.025.

To the extent an applicant is required to consider a tower that needs additional permits or approvals to accommodate the wireless communications facility, it is expressly limited to those tower proposals for which the application has already been filed. TDC 73.470(9) defines the types of “wireless communication facility monopoles” that must be considered for purposes of satisfying the tower separation requirement as follows: “For purposes of this section, a wireless communication facility monopole shall include wireless communication facility monopole for which the City has issued a development permit, or for which an application has been filed and not denied.” (Emphasis added). Similarly, TDC 33.025(1)(a)(i) requires an applicant to demonstrate that it is technically not practicable to collocate from “an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied.” (Emphasis added). This language demonstrates that the City Council intended to limit the types of towers that must be considered to those that either have the necessary permits or have filed for the necessary permits. Since ATC had not filed an application for the tree removal permit or variance by the time the Applicant filed this variance application, the Applicant was not required to consider the ATC Tower.

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<sup>1</sup> It is important to clarify that ATC’s Tower was approved at 130 feet, with an antenna tip height of 146 feet. Since there currently is an antenna at 146 feet, the tower would have to be increased close to an additional 20 feet in order to provide sufficient separation between the antennas.

While ATC's proposed interpretation serves its own financial interests, it is not consistent with the plain language or purpose of TDC 73.470(9) and TDC 33.025. Neither of these criteria require the Applicant to consider existing towers that would require additional permits or approvals, or at a minimum require consideration of those towers for which the permit application has already been filed. It would be virtually impossible to rule out existing towers within 1,500 feet because practically any tower could theoretically be modified in some way to accommodate another wireless communications facility if additional permits could be obtained. Applicants would then be beholden to the whims of the existing tower owner and would be subject to their timing and efforts to obtain the necessary approvals for the modifications. Even if the modifications may not be approved, applicants would be required to go through the modification permit process and wait until they are denied before even initiating an application like the variance application in this case. That is not the way TDC 73.470(9) and TDC 33.025 were intended to work.

**B. ATC cannot demonstrate that it is feasible to obtain the necessary permits or approvals to modify the ATC Tower.**

ATC repeatedly claims that it is "feasible" to obtain the necessary permits and approvals to modify the ATC Tower, but it failed to provide any analysis or evidence to support this claim. In order to demonstrate that it is "feasible" to obtain a subsequent permit or approval, the party must demonstrate that it is "possible, likely and reasonably certain to succeed." *Meyer v. City of Portland*, 67 Or App 274, 280 n.5, 678 P2d 741, rev den 297 Or 82 (1984); *Rhyne v. Multnomah County*, 23 Or LUBA 442 (1992). ATC has not even attempted to establish, nor can it establish, that it is more likely and reasonably certain that it would obtain the necessary permits and approvals to remove the trees or increase the height of the ATC Tower.

It is not feasible for ATC to obtain the necessary permits and approvals to remove the existing trees within a 155-foot radius of the ATC Tower for multiple reasons. The variance approval for the ATC Tower (VAR-99-02) relied heavily on the screening effect of the surrounding trees to justify the variance to the height standard. For example, the variance approval noted that "[t]all trees such as the subject property will obscure the tower and visually mitigate the tower an antennae for persons viewing it from off site and from the residential areas to the north" and concluded that "[t]he location and siting of the proposed Nextel tower will minimize the visual impact of the facility by blending in with the trees and the tower's surroundings and meets Objectives 1 and 3." Variance Decision, p.3 & 5. At a minimum, ATC would have to seek a modification to its variance approval in order to remove these screening trees since it relied so heavily on these screening trees. Since the removal of virtually all of these screening trees would undermine the key justification for granting the variance in the first place, it is highly unlikely that ATC could obtain the approval necessary to remove these trees.

Nor could ATC satisfy the tree removal permit criteria. While ATC gives the impression that it can remove the existing trees for practicably any reason, nothing could be further from the truth. The tree removal criteria are actually quite strict in order to minimize a property owner's ability to cut down trees. In order to justify the removal of the trees, ATC must demonstrate that the trees are diseased, a hazard or "[i]t is necessary to remove the tree to construct proposed improvements based on Architectural Review approval, building permit, or approval of a Subdivision or Partition Review." TDC 34.230(1). Clearly these trees are not diseased or a hazard, and ATC has not applied for or obtained any of these approvals. Therefore, ATC cannot obtain a tree

removal permit because none of the conditions precedent to obtaining such approval are present in this case.

ATC needs the City's consent to even consider removal of these trees. As the property owner, the City must agree to the removal of the surrounding trees on the City's property. ATC has not even broached this issue with the City, let alone submitted evidence demonstrating that the City is willing to agree to it. Nor is there any reason to believe that the City would support the clearing of a substantial number of trees on its property solely to support ATC's desire to generate more revenue on its tower.

ATC also needs the consent of the adjacent property to remove some of the trees since there is a row of trees to the north/northeast of the ATC Tower that are blocking the RF signals as well. We attached a tree survey, ATC King City OR1 308345, which identifies the surrounding trees that will need to be removed. A significant portion of the trees that need to be removed are located on the adjacent property to the north/northeast. ATC provided no evidence that this property owner is willing to have all of these trees removed from the property and it is highly unlikely that this adjacent owner will agree to do so in order to accommodate a taller and more visually impactful tower.

Finally, ATC suggested at the November 16 hearing that it may be possible to top or significantly trim the trees in order to remove the portion of the trees that are interfering with RF signals. There are several problems with this suggestion. Topping or significantly trimming the trees will look terrible and significantly undermine the visual screening that the trees currently provide. Similar to the proposal to remove the trees, topping or significantly trimming will require a modification to the variance approval. The Applicant also consulted with an arborist who confirmed that Topping or significantly trimming the trees could damage or kill some of the trees. These damaged trees will create hazards from falling limbs and may eventually led to their removal. The Applicant will be prepared to provide additional information on this issue if necessary at the December 7 hearing.

Similarly, it is not feasible for ATC to obtain a variance to further increase the height of the ATC Tower.<sup>2</sup> TDC 33.025(2) sets forth the criteria for obtaining a variance to the height limitation. TDC 33.025(2)(b) requires ATC to demonstrate that "existing WCFs, or a WCF for which an application has been filed and not denied, cannot be modified to provide the capacity or coverage the tower is intended to provide." (Emphasis added). ATC cannot satisfy this criteria because the proposed tower in this case is a WCF for which an application has been filed and not denied. In other words, there is a pending application for a new tower that can accommodate the wireless communications facility without exceeding the 100-foot height limit.

Additionally, it is unlikely that the City will approve a height variance to increase the height of an existing tower that already significantly exceeds the height limits. The ATC Tower already exceeds the allowed height by 30 feet or 30%, and it would be required to seek an approval for an additional 16 feet or more. If the City accepted ATC's interpretation, there would be virtually no limits on the

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<sup>2</sup> ATC's attorney's letter, dated November 16, 2017, acknowledged that ATC would be required to obtain a new variance in order to increase the height of the ATC Tower. There is no question that ATC would be required to obtain a new variance since the prior variance approval was limited to 130-feet and was approved based on that specific height.

height of towers because tower companies could perpetually increase the height of the tower by seeking new variances to accommodate additional wireless communications facilities. That is clearly not what the City intended when it adopted a 100-foot height restriction and the variance criteria.

ATC also needs the City's consent to significantly increase the height of the ATC Tower. As the property owner, the City is required to consent to the filing of a variance application and the increased height of the tower. Once again, ATC failed to submit any evidence that it had broached this issue with the City. Nor is there any reason to believe that the City would support a significant increase in the height of the ATC Tower since its prior approval limited the height to 130-feet.

**C. Verizon cannot achieve its coverage and capacity objectives even if the ATC Tower is increased in height or the screening trees are removed.**

Even if ATC was able to increase the height of the ATC Tower to 146 feet or remove the screening trees, the ATC Tower would still not satisfy Verizon's coverage and capacity objectives for this site. We attached Verizon's new RF Usage and Facility Justification analysis, dated November 20, 2017, which includes propagation maps showing the coverage for the proposed site, the existing ATC Tower with no trees, and the ATC Tower at 146 feet both with and without the screening trees. The propagation maps show that none of these modified ATC Tower options provide the same coverage and capacity as the proposed site at 100 feet. Verizon's RF engineer specifically noted that the ATC Tower options do not improve coverage in the residential area north of SW Tualatin Rd as well as the proposed site, which is the primary area of concern for this new facility.

Since the ATC Tower cannot be modified in a way that satisfies Verizon's coverage and capacity objectives for this site, the Applicant demonstrated compliance with the applicable variance criteria. TDC 33.025(1)(a)(i) requires an applicant to demonstrate that "[i]t is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites \* \* \*." Verizon's new RF Usage and Facility Justification analysis demonstrates that the ATC Tower cannot provide the needed capacity or coverage intended for this site.

At the November 16 hearing, ATC suggested that its own RF analysis concluded that the modified ATC Tower could meet the coverage and capacity objectives for this site, but such a claim is not reliable. ATC has not spoken with Verizon about the coverage and capacity objectives for this site, does not have access to all of the same network data and other proprietary information as Verizon's RF engineers do and it cannot speak for Verizon. Verizon's new RF Usage and Facility Justification analysis represents Verizon's position on this matter. ATC's RF analysis is based on incomplete and less reliable information, and is self-serving.

**D. ATC has not demonstrated that the City will extend the lease beyond 2020.**

ATC acknowledged that the current lease for the ATC Tower expires in 2020 and the City has not yet agreed to an extension or new lease. Given how much time it will take to obtain the approvals to either increase the height of the ATC Tower or clear the screening trees, do the actual work to increase the height or clear the trees, and obtain approval for the proposed wireless communications facilities, there will be very little time left on the existing lease term. Carriers cannot be required to

go through these time consuming and expensive processes for a site with very little time left on the existing lease. Unless and until ATC reaches an actual agreement with the City to extend or renew the lease, the ATC Tower cannot be used as a basis for denying the variance application.

**E. T-Mobile is not interested in the ATC Tower.**

At the November 16 hearing, ATC suggested that T-Mobile is more interested in the ATC Tower than the Applicant's proposed tower. That statement is simply not true. We attached an email exchange between the Applicant and T-Mobile, dated November 21, 2017, in which T-Mobile confirms that it did not communicate a desire to locate on the ATC Tower and that the ATC Tower will not work for the same reasons it does not work for Verizon.

As explained in the application material and the Staff Report, the Applicant demonstrated compliance with the variance criteria and therefore the variance application should be approved. There is no dispute that the ATC Tower cannot accommodate the proposed wireless communications facility and TDC 73.470(9) and TDC 33.025 do not require the Applicant to delay this project until ATC can determine if it will be able to get the necessary tree removal, variance and property owner approval to modify the ATC Tower. Moreover, the permit requirements and evidence indicate that it is not likely that ATC will be able to obtain these approvals. And even if ATC was able to increase the height of the ATC Tower or remove the screening trees, it still would not satisfy Verizon's coverage and capacity objectives for this site. For all of these reasons, the Commission should reject ATC's arguments and approve the application.

Very truly yours,

HATHAWAY LARSON LLP



E. Michael Connors

EMC/pl

Enclosures

cc: ACOM Consulting Inc.

Lendlease



# **RF Usage and Facility Justification**

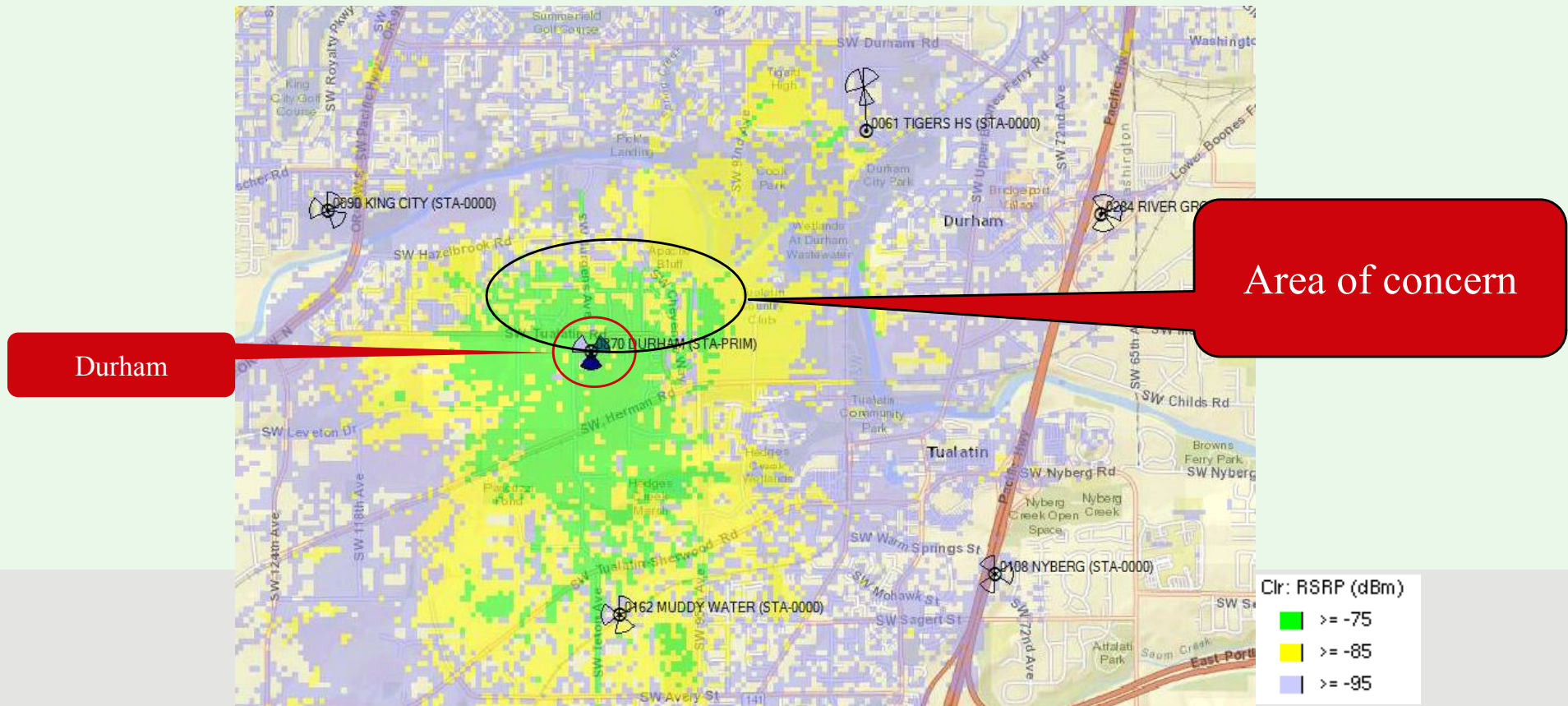
## **Durham**

**Prepared by Verizon Wireless Walid Nasr**

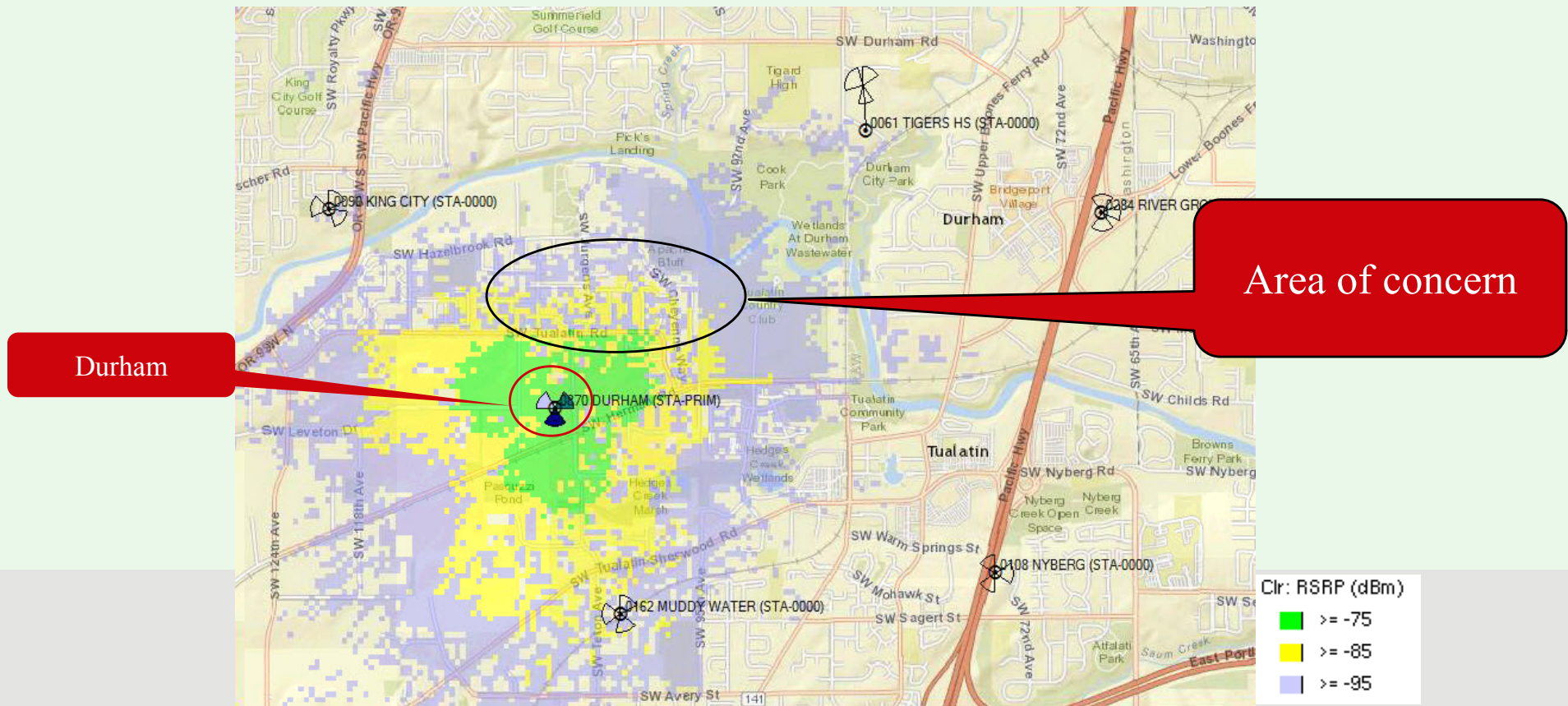
**Nov 20, 2017**



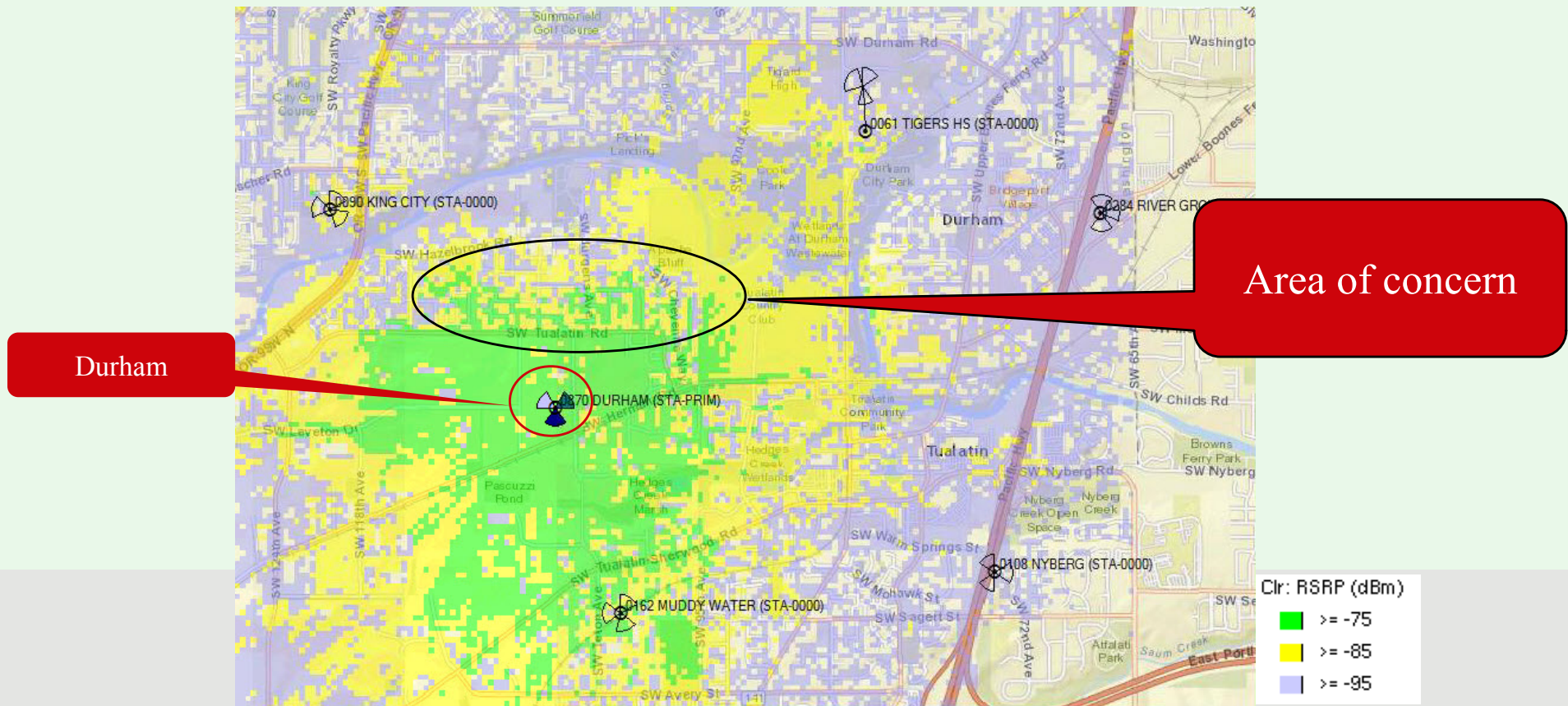
# Coverage with Proposed Durham Site



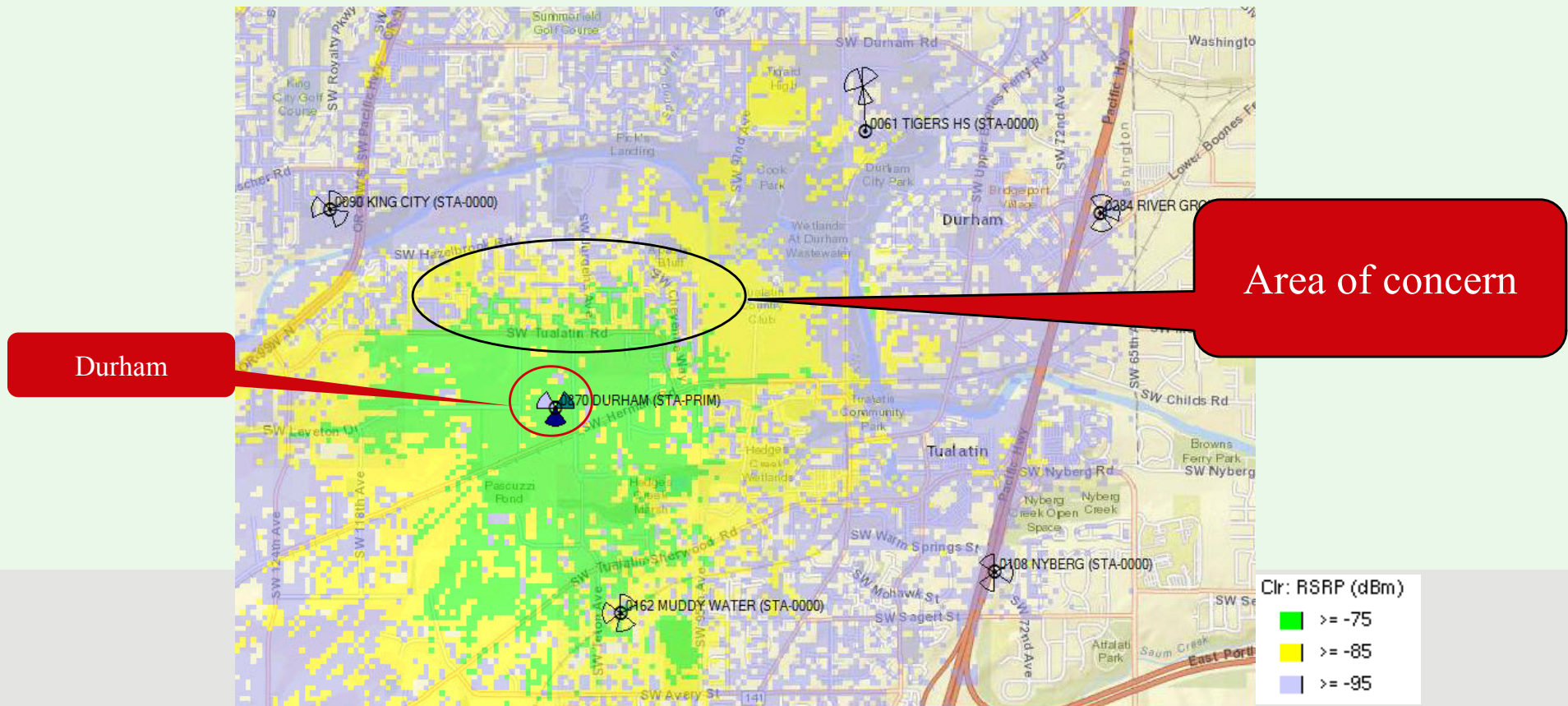
# Coverage at ATC location at 146' with trees



# Coverage with Durham Site at ATC 146' without trees



# Coverage at ATC 120' without trees



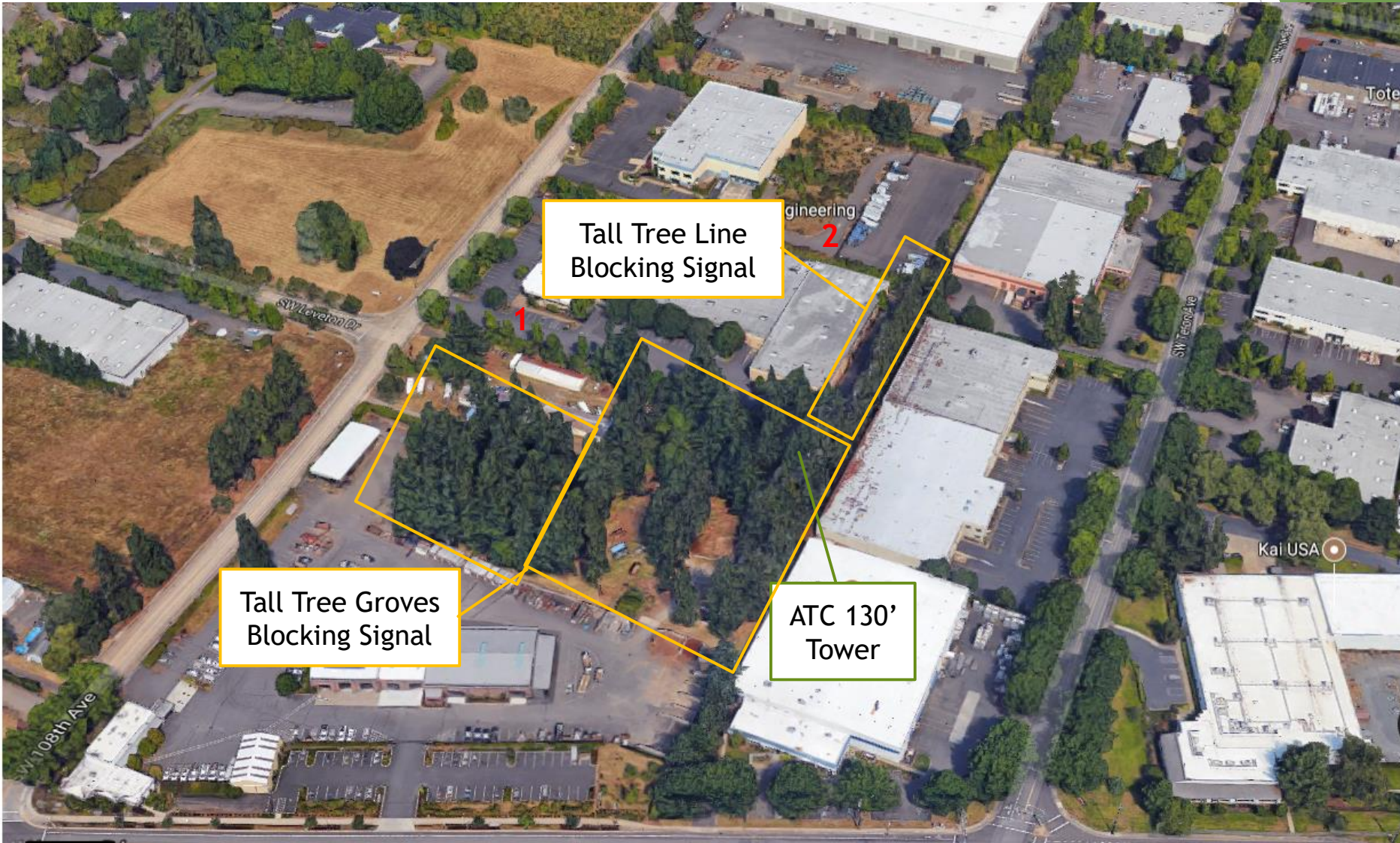
## Summary

- ATC tower does not work at 146' with the existing tree cover.
- With the trees removed the ATC tower using both 146' and 120' heights will function but the area of concern is better covered with the proposed Durham location at 100 feet.
- ATC tower doesn't improve coverage in the residential area north of SW Tualatin Rd compare to proposed Durham tower location which is the area of concern.

# ATC King City OR1 308345

onsite verification of trees 11/17/18

- The trees affecting the RF signal are in three main areas
  - The grove surrounding the tower.
  - The grove to the West / Southwest
  - The tree line to the North / Northeast on the adjacent property
- The affected trees are approximately 120-140 feet tall
- There are approximately 40-60 trees in the three areas shown





# Looking North from ATC gate, along the fence line at tree grove



# Looking West / Southwest from ATC Site at the tree grove



# Looking South / Southeast from ATC Site at the tree grove



# Looking East / Northeast through the ATC Site at the tree grove

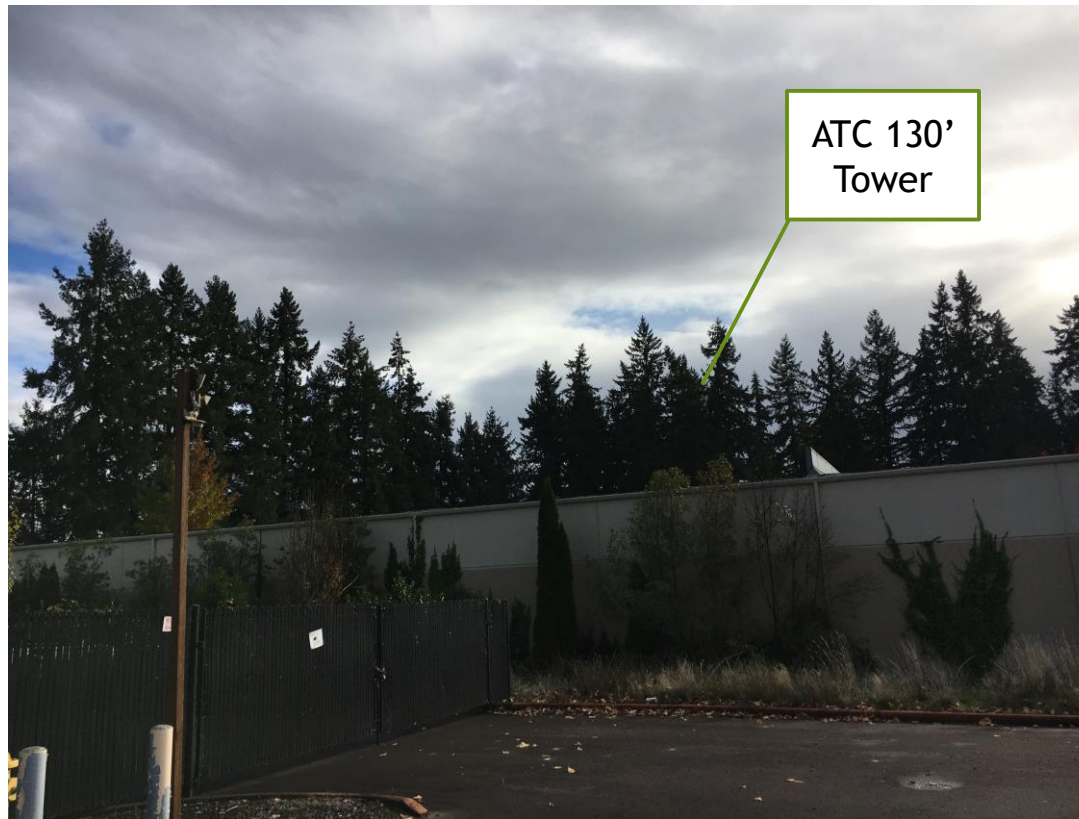



# Looking North from adjacent property at the tree line and tree grove (position 1)



ATC 130'  
Tower

# Looking Southeast from adjacent property at the tree line and tree grove (position 2)



**From:** Bloom, Aaron Aaron.Bloom@lendlease.com   
**Subject:** FW: [EXT]:RE: PI Tower: 10290 SW Tualatin Road  
**Date:** November 21, 2017 at 11:58 AM  
**To:** Sarah Blanchard sarah.blanchard@acomconsultinginc.com

AB

**Aaron Bloom**  
Area Business Development Director  
Telecom Infrastructure  
12830 SW Park Way, Portland, OR 97225  
T 503 880 4940  
[aaron.bloom@lendlease.com](mailto:aaron.bloom@lendlease.com) | [www.lendlease.com](http://www.lendlease.com)



---

**From:** Brown, Julio [mailto:Julio.Brown@T-Mobile.com]  
**Sent:** Tuesday, November 21, 2017 11:47 AM  
**To:** Bloom, Aaron <Aaron.Bloom@lendlease.com>  
**Subject:** RE: [EXT]:RE: PI Tower: 10290 SW Tualatin Road

He confirmed what I had relayed to you. There was no communication to ATC that said we were going to locate on their tower.

As you know, that tower has major issues (buried in the trees), so I do not want to use it. While there has been a suggestion that it could be extended, there is no guarantee that that would happen, nor a specific timeline. That makes it an inferior candidate.

Julio Brown  
Sr. RF Engineer  
T-Mobile Portland  
[julio.brown@t-mobile.com](mailto:julio.brown@t-mobile.com)  
503-820-9337

---

**From:** Bloom, Aaron [mailto:Aaron.Bloom@lendlease.com]  
**Sent:** Tuesday, November 21, 2017 11:37 AM  
**To:** Brown, Julio <[Julio.Brown@T-Mobile.com](mailto:Julio.Brown@T-Mobile.com)>  
**Subject:** PI Tower: 10290 SW Tualatin Road

Hi Julio,

I wanted to circle back with you to see if you had a chance to speak to Gurjeet about ATC's opposition to our site, and claim that T-Mobile prefers their location. Anything you can provide would be greatly appreciated. We have until 5 pm tomorrow to submit any further evidence supporting our zoning application, with the hearing resuming on 12/7.

Thanks so much for all your support with this!  
Aaron

Aaron

**Aaron Bloom**

Area Business Development Director

Telecom Infrastructure

12830 SW Park Way, Portland, OR 97225

T 503 880 4940

[aaron.bloom@lendlease.com](mailto:aaron.bloom@lendlease.com) | [www.lendlease.com](http://www.lendlease.com)



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November 22, 2017

VIA ELECTRONIC MAIL: [ahurd-ravich@tualatin.gov](mailto:ahurd-ravich@tualatin.gov)



City of Tualatin Planning Commission  
Attn: Aquilla Hurd-Ravich  
18880 SW Martinazzi Ave  
Tualatin, OR 97062-7092

RE: PI Tower Development Project OR-Tualatin-Durham/ 10290 SW Tualatin Road  
(Tax Map/Lot: 2S1 23B 000800) (VAR-17-0001)  
Our File No: 00000-28543

Dear Ms. Hurd-Ravich and Honorable Planning Commissioners:

Thank you for giving me and my client an opportunity to appear before you last week. As you know, I represent American Tower Corporation, a Delaware corporation, and Tower Asset Sub, Inc., a Delaware corporation ("**ATC**"), which owns a wireless communications facility located at 10318 SW Herman Road, Tualatin, Oregon (the "**ATC Tower**"). ATC submitted oral and written testimony regarding its concerns regarding the proposed wireless communication facility on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. (herein collectively "**Applicant**") on the southwest corner of 10290 SW Tualatin Road, Tualatin, Oregon (herein the "**Subject Property**"). I am submitting this letter and the attached exhibits to address certain factual and legal questions of the Commissioners and staff. Below in italics are a summary of those questions followed by my answers.

1. *Can the ATC Tower accommodate additional users, if the tower was extended to 146 feet consistent with the existing approval?* Yes, ATC's existing variance approval granted a variance to the wireless communications facility standard of 100 feet, subject to the following condition of approval, which is the only condition of approval: "The monopole tower, antenna platform and whip antennae shall not exceed 146 feet in height above grade." ATC has the right under the existing permit to extend the tower to 146 feet without additional land use approval, so long as there is no additional antenna extending beyond such height. Attached as **Exhibit 1**, you will find supplemental RF coverage maps that demonstrate the ATC tower can accommodate new uses in a manner substantially similar as represented by Applicant. Below are two images. The first is Applicant's proposed coverage map demonstrating projected Verizon coverage. The second is a coverage map by ATC demonstrating projected Verizon coverage on the ATC tower at 146 feet, without cutting any trees.

Park Place, Suite 200  
250 Church Street SE  
Salem, Oregon 97301

Post Office Box 470  
Salem, Oregon 97308

tel 503.399.1070  
fax 503.371.2927

Attachment C pg 1  
[www.sglaw.com](http://www.sglaw.com)

Image 1 – Applicant proposed coverage map:

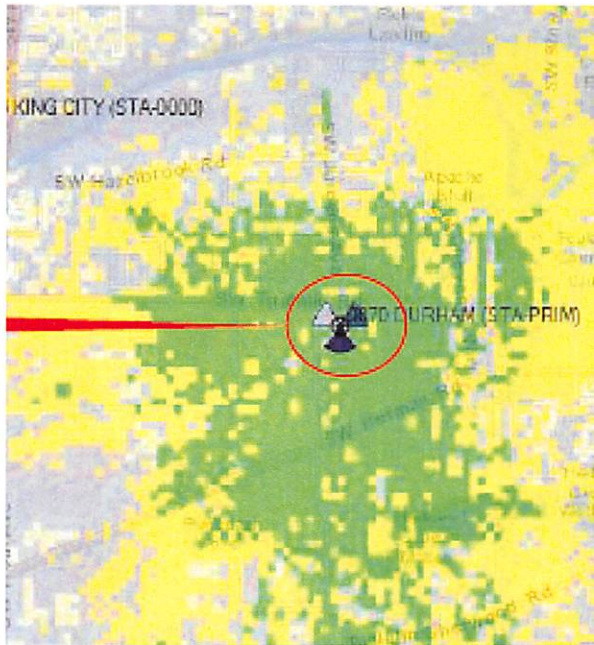
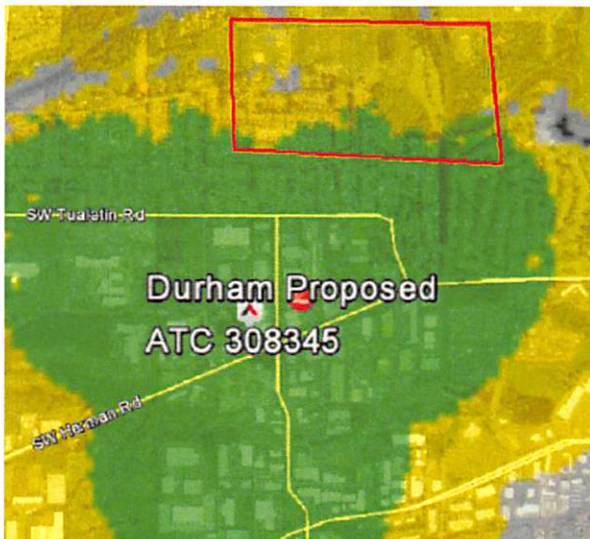


Image 2 – ATC proposed coverage map without modification of permit:



2. *Can the ATC Tower structurally accommodate an extension of the exiting pole?* Yes, ATC has submitted a letter from Bryan Lanier, an Oregon licensed P.E., S.E., who is of the expert opinion that the existing site can accommodate such an extension. See **Exhibit 2**.
3. *What is the difference between green and yellow?* The color coding corresponds to the measurement of decibel-milliwatts as evidenced on the ATC RF maps (green equals greater or equal to -75 dBm and yellow equals greater or equal to -85 dBm; however, the distinction between green and yellow and how that relates to coverage on cell phones (i.e., how many

bars?) is proprietary to Verizon. ATC cannot directly answer that question, and directs the Commissioners and staff to Applicant for further information.

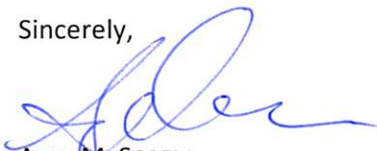
4. *Who determines if the ATC Tower "cannot be modified to accommodate another provider" as required under TDC 33.025(1)?* Applicant has requested a variance to the City's Wireless Communication Facilities development standards; therefore, it is Applicant's burden of proof to satisfy all applicable criteria. Because Applicant's proposed tower is within 1,500 feet of the ATC Tower, TDC 33.025(1)(a) requires Applicant to prove the ATC Tower "cannot be modified to accommodate another provider." This burden of proof is not on ATC. Nonetheless, ATC has reviewed Applicant's evidence and determined that it is not accurate. Applicant's error is due to its false assumption that ATC could not extend its tower and could not accommodate an additional provider. ATC has conclusively provided evidence that the ATC Tower can be extended without an additional variance and it has the needed capacity. Therefore, Applicant cannot meet its burden of proof, and the Commissioners must deny its variance request.
5. *Are other carriers interested in using the ATC Tower?* While this question is beyond the scope of the criteria, ATC has correspondence from T-Mobile demonstrating interest in the ATC Tower as a first option. See **Exhibit 3**. The attached correspondence demonstrates this interest. As ATC has now demonstrated the ability to extend the ATC Tower above the tree-line, it believes it can satisfy additional carrier coverage.
6. *What are the terms of the ATC existing lease and proposed lease?* Again, review of ATC's existing lease is beyond the scope of review of Applicant's (Acom) evidence; however, in the spirit of open communication, ATC has submitted a copy of the existing lease and proposed lease amendment for the Commission's review. See **Exhibit 4**. Please note, the monetary terms have been redacted and the proposed lease amendment is still subject to further changes by the parties. To the extent the existing lease is relevant, it does substantiate ATC's representation that the ATC Tower may be extended to the full 146 feet as there are no such restrictions on ATC's right to "erect, maintain and operate on the premises radio communication facilities, including without limitation an antenna tower or pole and foundation."

I believe this letter answers the Commission's questions. Please let me or staff know if ATC can be of further assistance.

Based on ATC's prior written and oral testimony, this letter, and the attached exhibits, ATC requests the Commission to deny Applicant's proposed variance request.

Thank you for your time and attention.

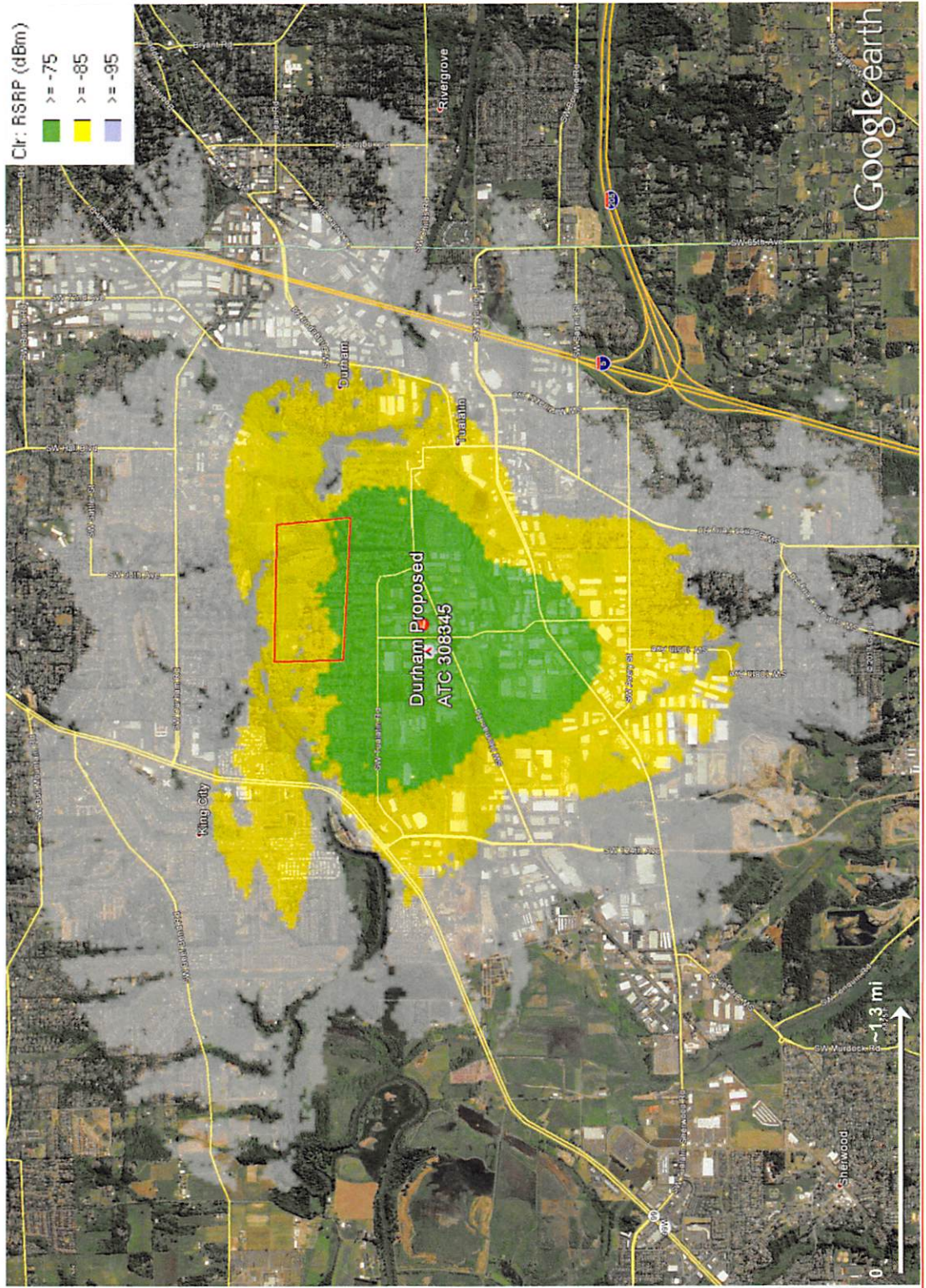
Sincerely,



ALAN M. SOREM  
asorem@sglaw.com  
Voice Message #303

Enclosures  
cc: Client

# 308345 700 MHz LTE Coverage @ 150 ft. Above Tree Line



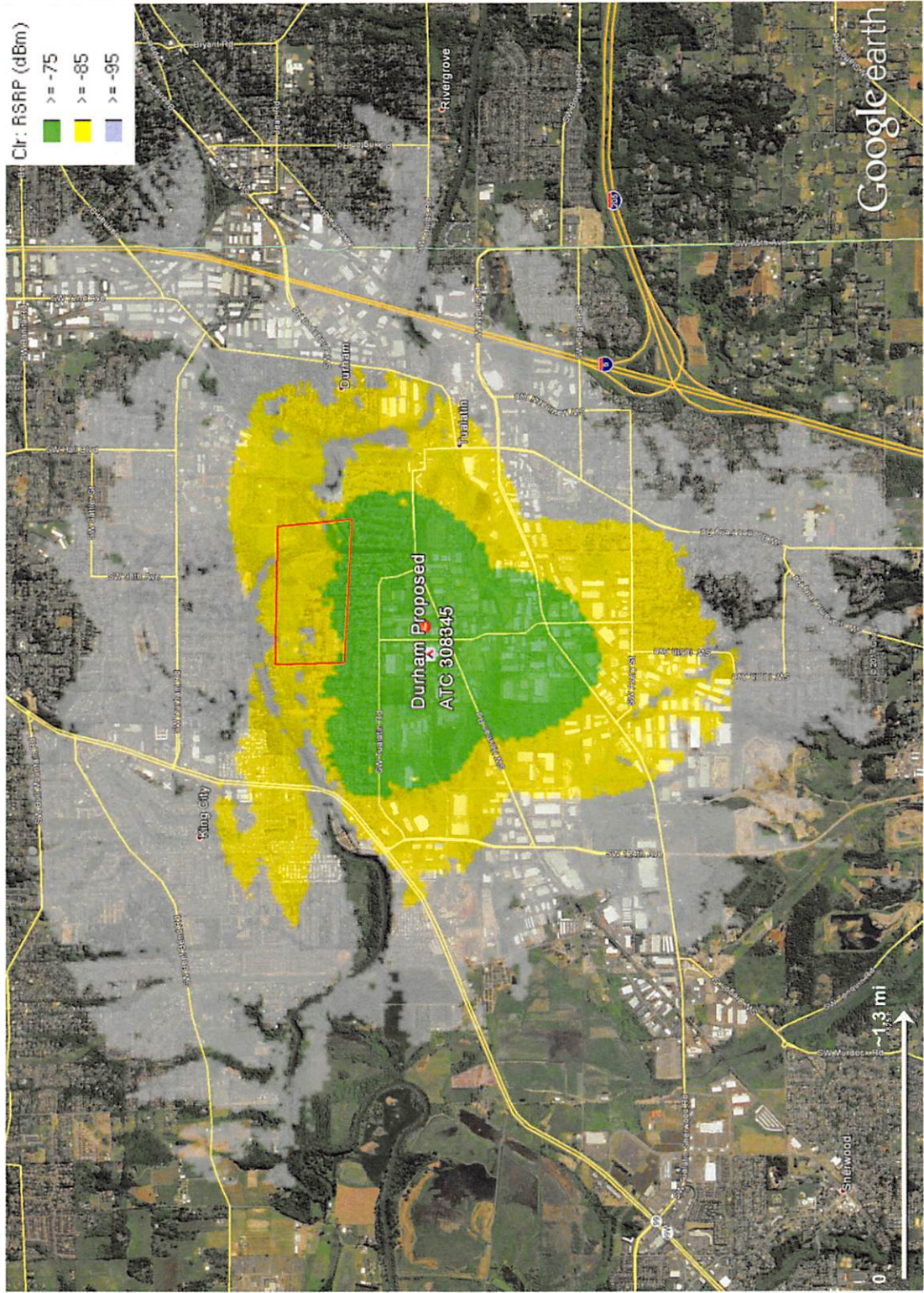
tabbles®

EXHIBIT

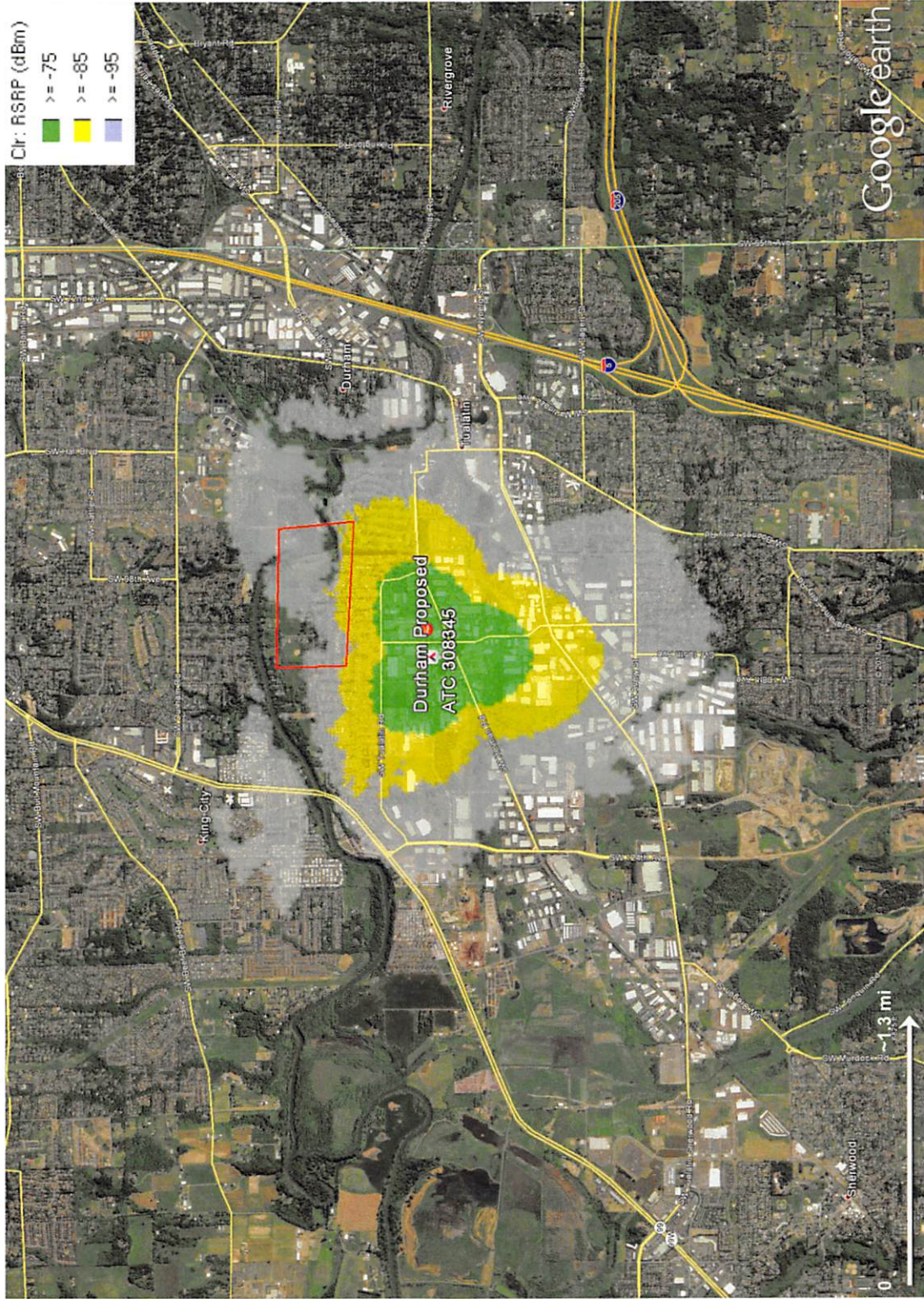
1



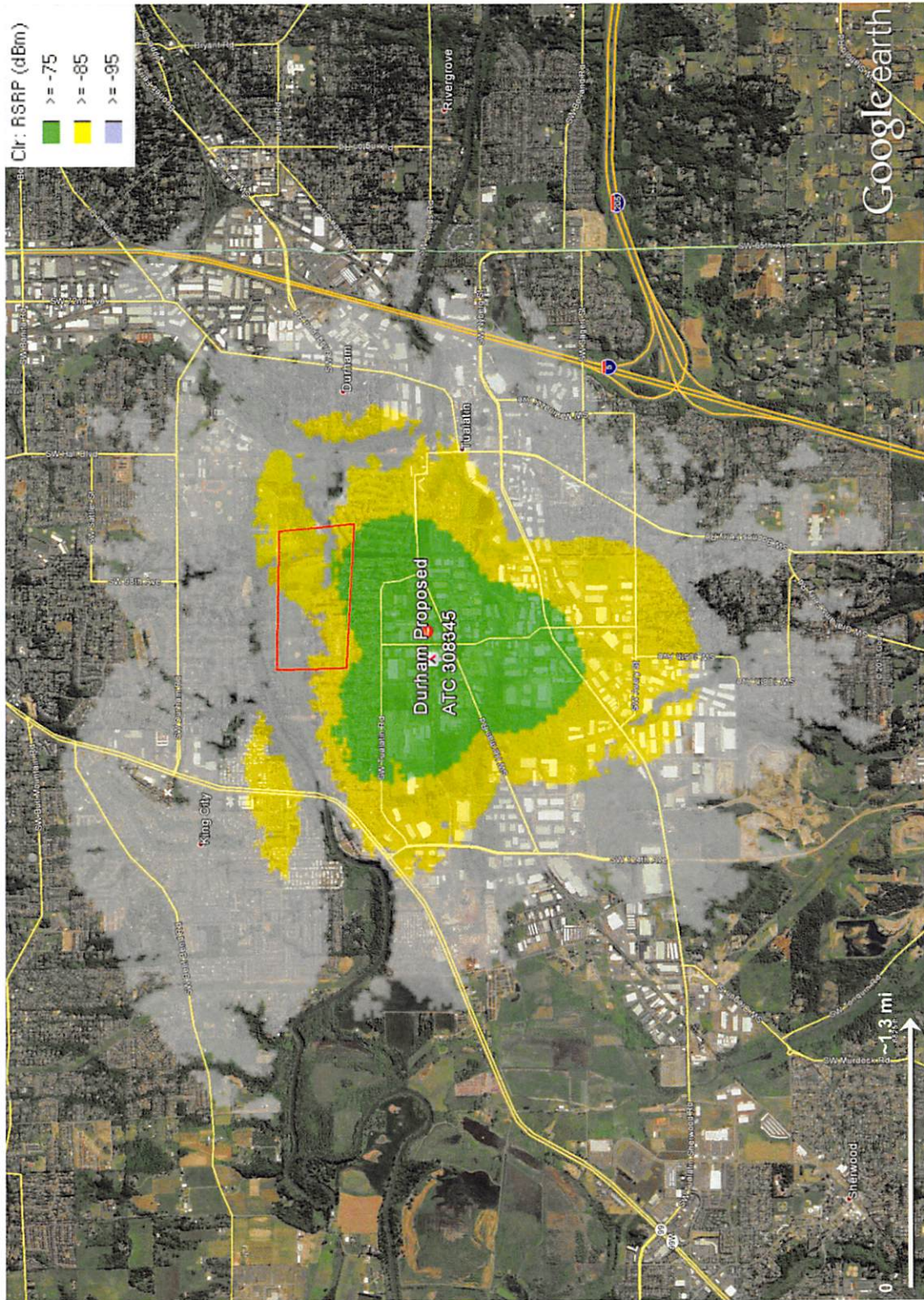
# 308345 700 MHz LTE Coverage @ 146 ft. Above Tree Line



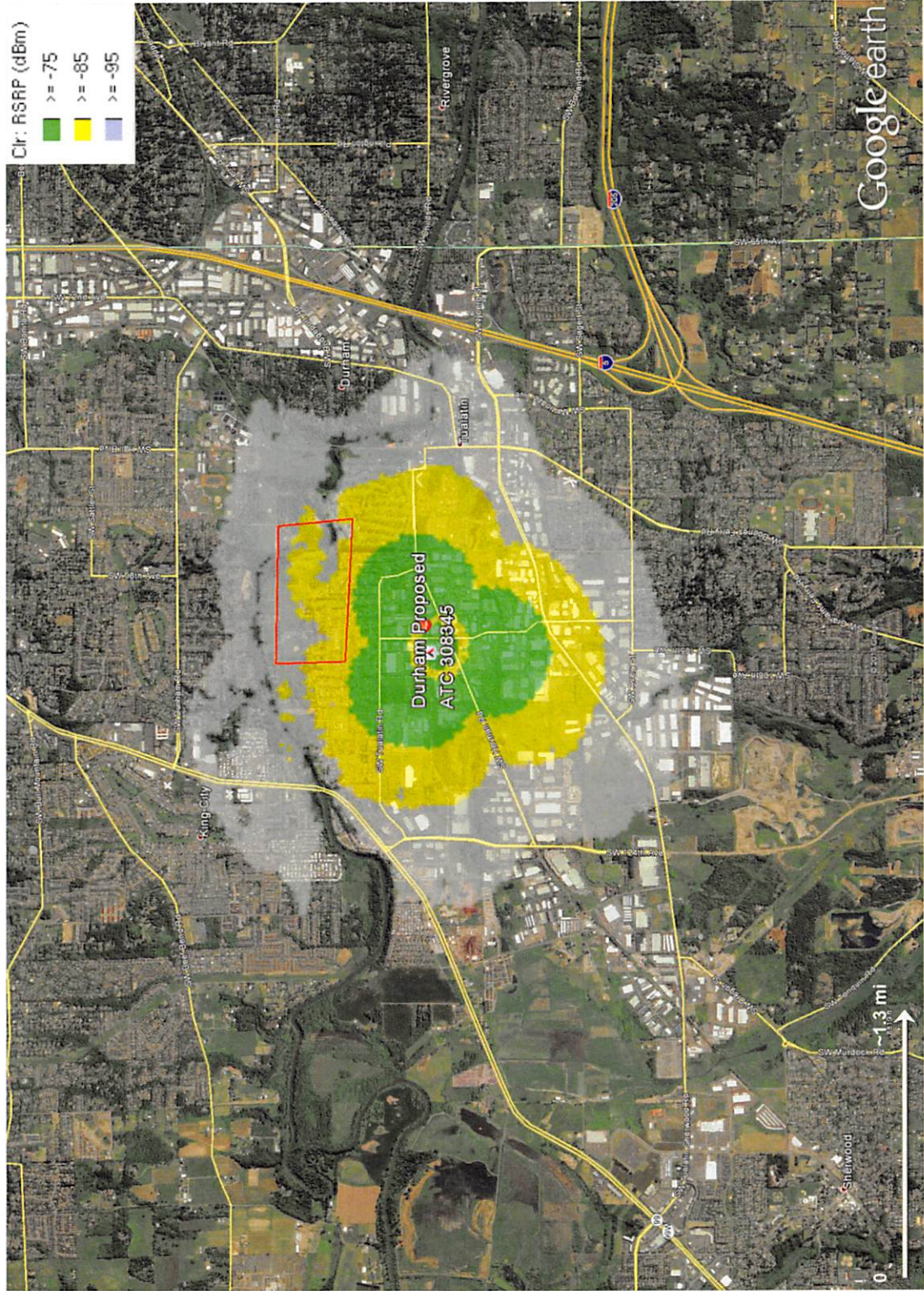
# 308345 700 MHz LTE Coverage @ 110 ft. Below Tree Line



# 308345 700 MHz LTE Coverage @ 110 ft. Trees Pruned 155 ft. Radially

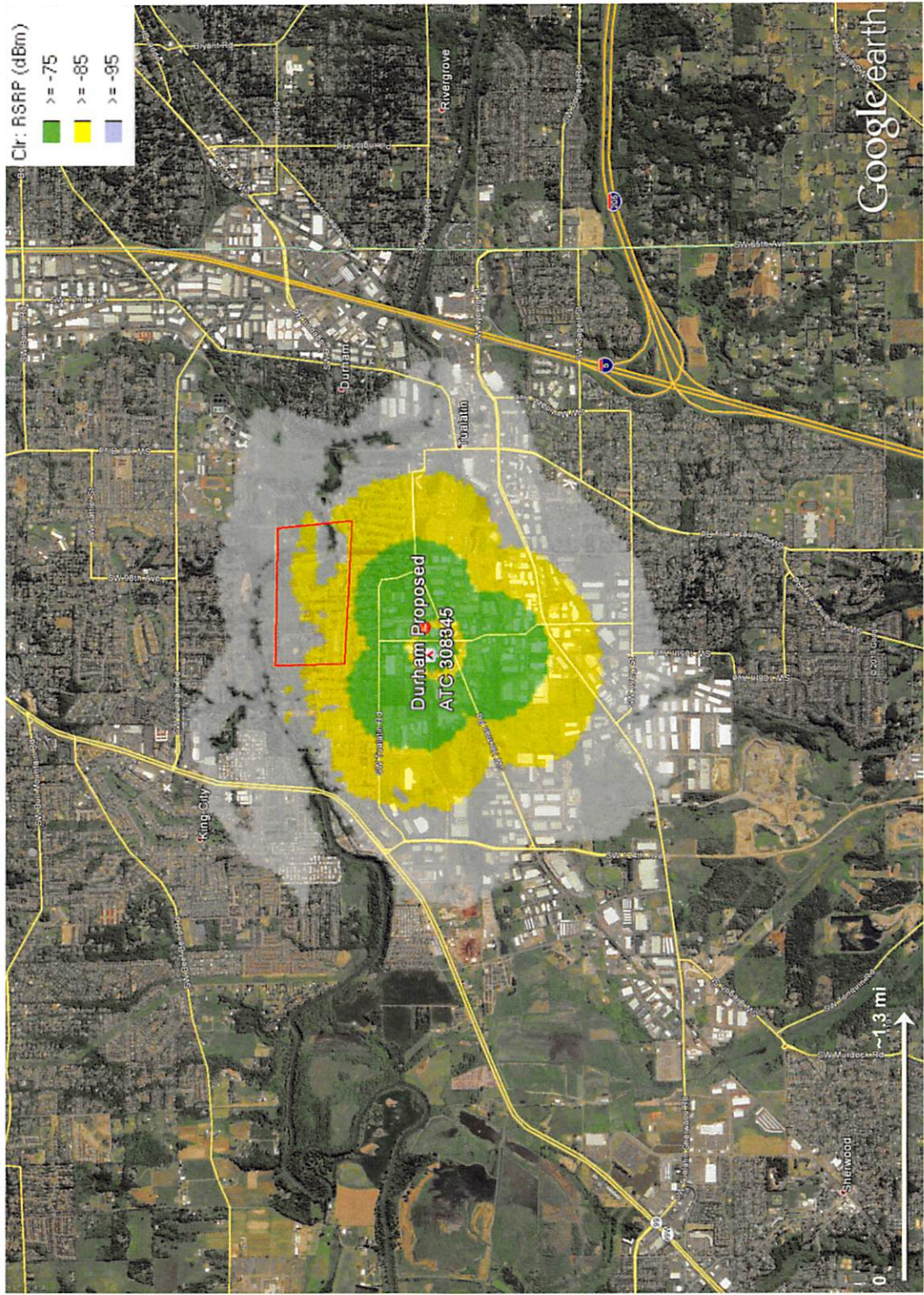


# 308345 2,100 MHz (AWS) LTE Coverage @ 150 ft. Above Tree Line

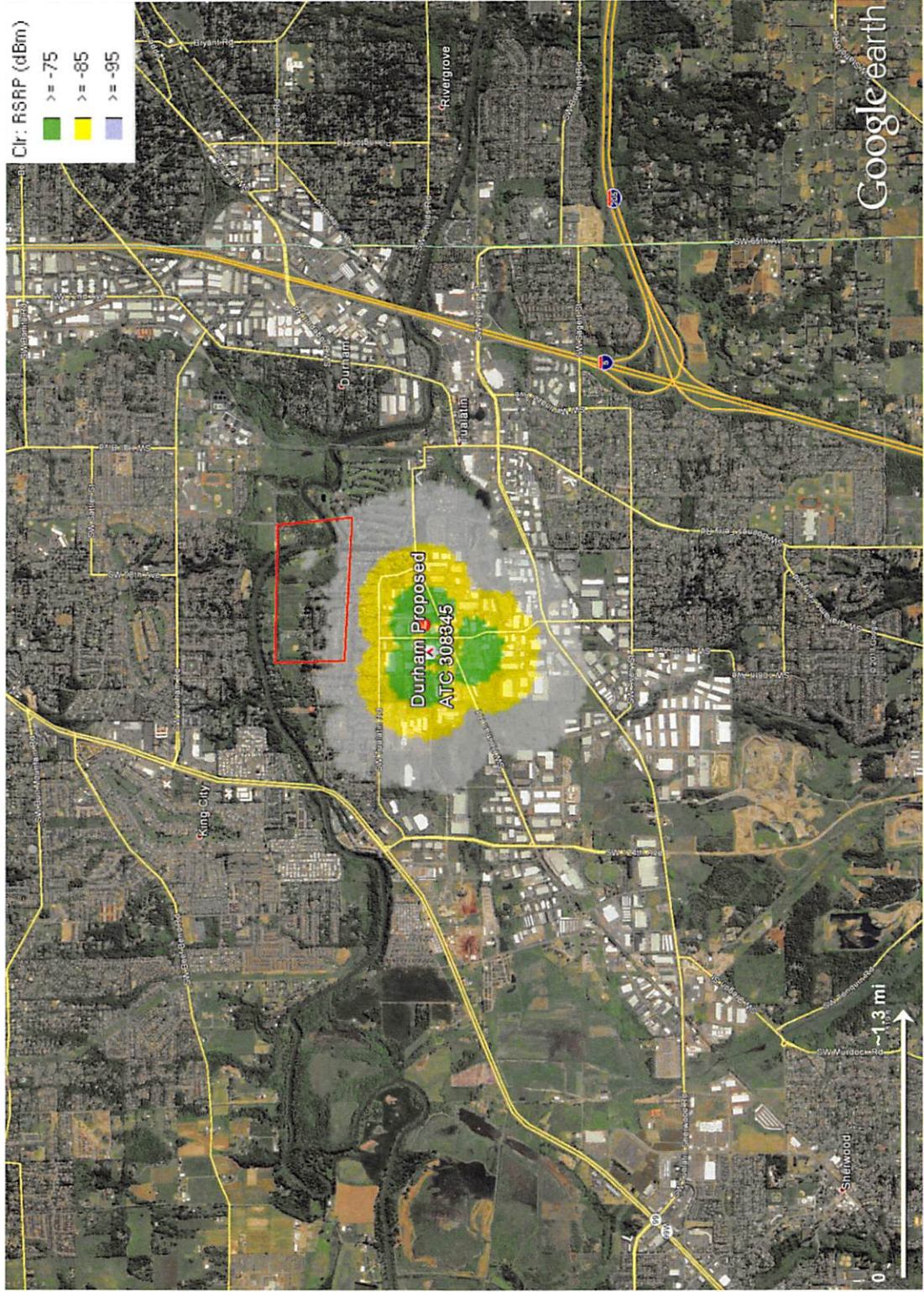




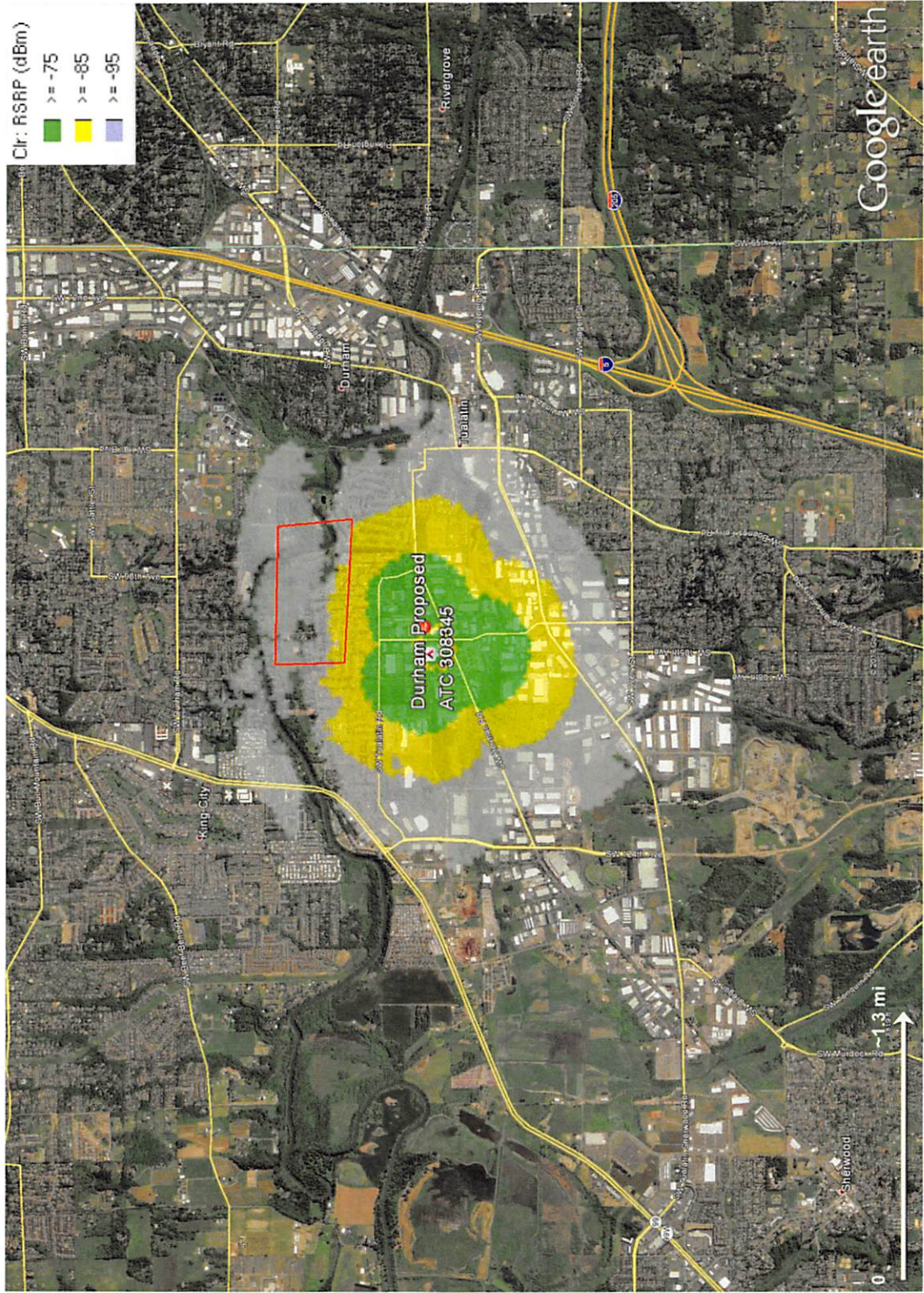
# 308345 2,100 MHz (AWS) LTE Coverage @ 146 ft. Above Tree Line



# 308345 2,100 MHz (AWS) LTE Coverage @ 110 ft. Below Tree Line



# 308345 2,100 MHz (AWS) LTE Coverage @ 110 ft. Trees Pruned 155 ft. Radially





Cantay Ozkan  
American Tower Corporation  
10 Presidential Way  
Woburn, MA 01801  
November 7, 2017

**ATC Site: 308345 King City OR 1 (10318 SW Herman Rd, Tualatin, OR 97062-8841)**

**Tower: 130 ft. Monopole**

**Subject: Initial Structural Evaluation of Existing Tower**

American Tower Engineering Services has completed an initial structural review of the above noted tower. The purpose of this review was to provide a preliminary evaluation as to if the tower can support T-Mobile and Verizon’s newly proposed future equipment at the requested rad centers pertaining to two different scenarios. Both scenarios will keep the existing Sprint Nextel equipment and its corresponding rad height as existing at 130 ft.

Scenario 1: The existing 130 ft monopole to have a 20 ft proposed extension with Verizon obtaining a new rad height of 150 ft and T-Mobile of 140 ft. Both carriers will have the following loading scenario: (12) 8 ft panels and (12) RRU’s on a platform w/ handrails.

Scenario 2: The existing 130 ft monopole to have Verizon obtain a new rad height of 120 ft and T-Mobile of 110 ft. Both carriers will have the following loading scenario: (12) 8 ft panels and (12) RRU’s on a platform w/ handrails.

After review, the tower and foundation would be able to accommodate, structurally, both scenarios per ANSI/TIA-222-G specifications. No structural upgrades to the tower or foundation, aside from the extension, would be needed for either scenario.

Please contact the undersigned with any questions regarding this report at 919.466.5004.



Expires: 12/31/2018

Nov 7 2017 2:26 PM **cosign**

Bryan Lanier, P.E., S.E.  
Director, Customer Engineering



---

**From:** [REDACTED] [REDACTED]@T-Mobile.com]  
**Sent:** Thursday, November 02, 2017 10:12 AM  
**To:** Mike Clarke  
**Subject:** RE: ATC# 308345 - King City OR 1

Hi Mike,

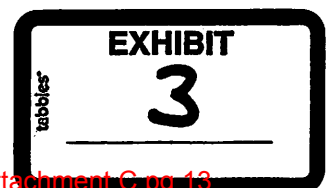
This tower was my first choice but when we visited the location, we found it is surrounded by taller trees. We couldn't even see tower from road except from one spot. If we cando something about these trees, I would definitely like to go on this tower.

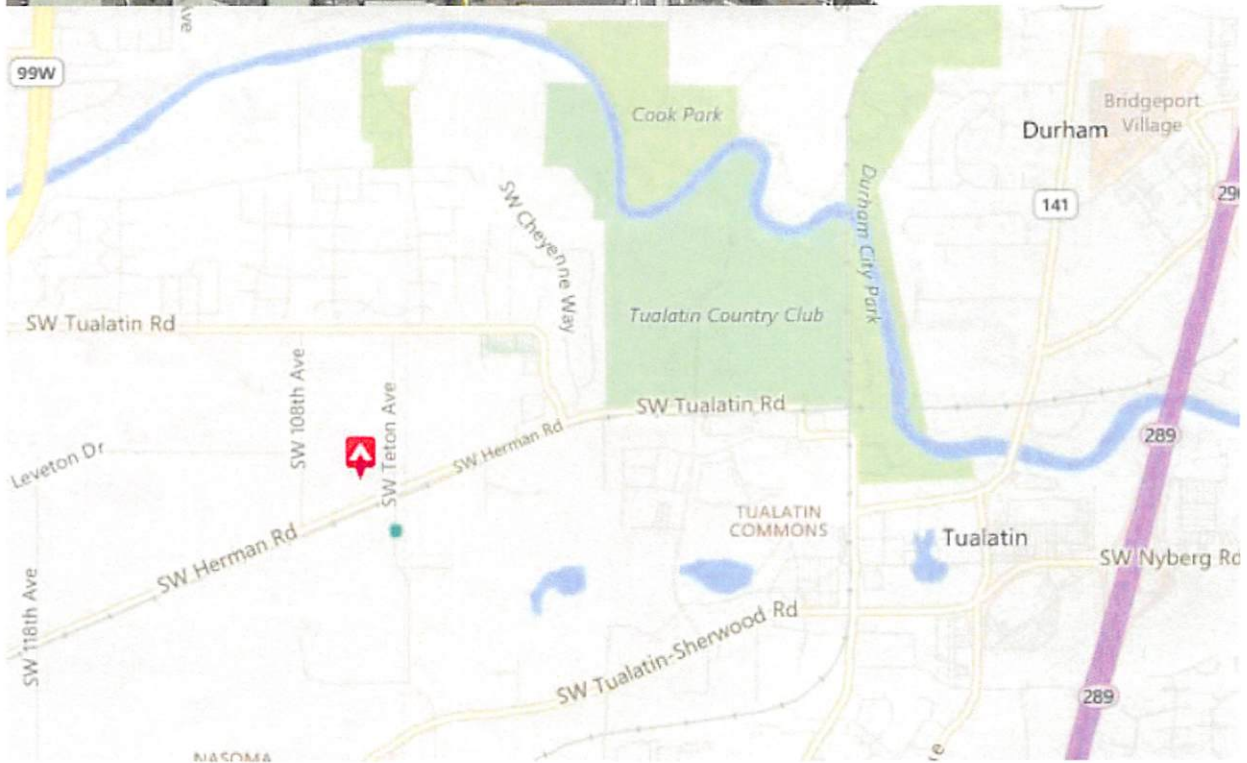
Thanks

**From:** Mike Clarke [mailto:Michael.Clarke@americantower.com]  
**Sent:** Thursday, November 02, 2017 10:04 AM  
**To:** [REDACTED]@T-Mobile.com>  
**Subject:** ATC# 308345 - King City OR 1

Hi [REDACTED],

I heard for outside source that you may be interested in this site area near Tualatin. Let me know if that is correct. We have a 130' tower with plenty of space and capacity.  
Lat/Long: 45.38597, -122.7853





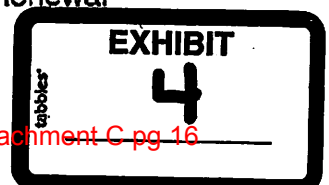
**Mike Clarke**  
*Territory Manager - Business Development*  
Pacific Northwest, Alaska and Hawaii  
**American Tower Corporation**  
Carnation, WA  
425-754-7533 Cell  
[michael.clarke@americantower.com](mailto:michael.clarke@americantower.com)  
Find, Apply and Track Online with [ON AIR Access](#).

## **COMMUNICATIONS SITE LEASE AGREEMENT**

This Lease Agreement ("Agreement") is entered into this 13 day of March, 2000 between **Nextel West Corp.**, a Delaware corporation, d/b/a **Nextel Communications** ("Lessee"), and the **City of Tualatin, Oregon**, an Oregon municipal corporation ("City").

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

- 1. Premises.** City is the owner of a parcel of land (the "Land") located in the City of Tualatin, County of Washington, State of Oregon, commonly known as 10699 SW Herman Road, Tualatin, Oregon 97062. The Land is more particularly described in Exhibit A, which is attached. City hereby leases to Lessee approximately 3600 square feet of the Land and all access and utility easements, if any, (the "Premises"), described in Exhibits A-2 and B which are attached.
- 2. Use.** Lessee may use the Premises for permitted uses only ("Permitted Uses"). Permitted Uses include any activity in connection with the provision of communications services. City agrees to cooperate with Lessee, at Lessee's expense, in making application for and obtaining all licenses, permits and all other necessary approvals that may be required for Lessee's intended use of the Premises. Subject to paragraphs 7 and 13 below, Lessee agrees to permit other telecommunications providers to colocate on Lessee's tower or pole provided the other telecommunications provider enters into an Agreement with Lessee for the tower or pole space.
- 3. Tests and Construction.** After the full execution of this Agreement, Lessee may enter the Land at any time for the purpose of making appropriate engineering and boundary surveys, inspections, soil test borings, other reasonably necessary tests and constructing the Lessee Facilities, as described in Paragraph 6(a). As provided for in paragraph 6 below, the City may restrict or limit access to the Site when the City is operating its Emergency Command Center.
- 4. Term.** The term of this Agreement is five (5) years, commencing eighteen months after full execution or upon the start of construction of Lessee Facilities, whichever occurs first ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date (the "Term") unless otherwise terminated as provided in Paragraph 10. Lessee has the right to extend the Term for three (3) successive five (5) year periods (the "Renewal





Terms") on the same terms and conditions as set forth in this Agreement. This Agreement shall automatically be extended for each successive Renewal Term unless Lessee notifies the City of its intention not to renew prior to the commencement of the succeeding Renewal Term.

**5. Rent.**

(a) Upon the Commencement Date and on the first day of each month thereafter, Lessee shall pay to City as rent [REDACTED] ("Rent"). Rent for any fractional month at the beginning or end of the Term or Renewal Term shall be pro rated. Rent shall be payable to City of Tualatin, at P.O. Box 369, Tualatin, Oregon 97062, Attention: Operations.

(b) Rent shall be [REDACTED]

**6. Facilities; Utilities; Access.**

(a) Lessee has the right to erect, maintain and operate on the premises radio communications facilities, including without limitation an antenna tower or pole and foundation, utility lines, transmission lines, air conditioned equipment shelters, electronic equipment, radio transmitting and receiving antennas, supporting equipment and structures ("Lessee Facilities"). In connection with these facilities, Lessee may do all work necessary to prepare, maintain and alter the Premises for Lessee's business operations and to install transmission lines connecting the antennas to the transmitters and receivers. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expense, in a good workmanlike manner. Title to Lessee's Facilities shall be held by Lessee. All of Lessee's facilities shall remain Lessee's personal property and are not fixtures. Lessee may remove all Lessee's Facilities at its sole expense on or before the expiration or earlier termination of the Agreement; provided, Lessee repairs any damage to the Premises caused by such removal. Upon termination of this Agreement, Lessee shall not be required to remove any foundation more than one foot below grade level.

(b) Lessee shall pay for the electricity it consumes in its operation at the rate charged by the servicing utility company. Lessee shall obtain separate utility service for its Facilities. City agrees to sign such documents or easements as required by the utility companies to provide services to the Premises, including the grant to Lessee or to the servicing utility company at no cost to Lessee, of an easement in,

over, across or through the Land as required by the utility company to provide utility service as provided in this Agreement in a location acceptable to the City and the servicing utility company.

- (c) Lessee and the City shall work together to develop a system for Lessee access that will maintain security of the Premises and the Emergency Operations Center, when operating. Lessee, Lessee's employees, agents, subcontractors, lenders and invitees shall have access to the Premises 24 hours a day, 7 days a week at no charge. City grants a non-exclusive right and easement for pedestrian and vehicular ingress and egress across the portion of the Land described in Exhibit B to Lessee, its agents, employees, contractors, guests and invitees.
- (d) The City shall maintain all access roadways from the nearest public roadway sufficient to allow pedestrian and vehicular access at all times under normal weather conditions. The City shall be responsible for maintaining and repairing such roadway at its sole expense, except for damage caused by Lessee's use of the roadways.
- (e) Lessee agrees to retain an arborist, approved by the City, to determine tree type, health, growth potential and characteristics of trees at the Site that may be impacted by the Lessee Facilities. This information shall be used in the planning of the location of Lessee Facilities. Lessor grants to Lessee permission to construct an access road from (name of nearest public road) to the Premises (the "Access Road", across Land owned by Lessor and adjacent to the Premises, as more fully described in Exhibit B. Lessee will maintain the Access Road at its sole cost and expense, except for any damages resulting from use of the Access Road by Lessor, its agents, employees, licensees, invitees, or contractors, and which costs to repair such damage shall be Lessor's sole responsibility. Lessee agrees to work with the City to locate its Facilities and Access Road in a manner that minimizes the removal of and impact to existing trees. The timber value that results from Lessee removing trees from the Land to construct and operate the Lessee Facilities shall be agreed upon prior to removal and split 50/50 with the City.

## **7. Interference.**

- (a) Lessee shall operate the Lessee Facilities in a manner that will not cause interference to the City or to Tualatin Valley Fire and Rescue ("TVF&R"). Lessee shall operate the Lessee Facilities in a manner that will not cause interference to other lessees or licensees of the Land, provided that the lessees' or licensees' installations predate that of the Lessee Facilities and provided their operations are in compliance with all Federal Communications Commission ("FCC") requirements. All operations by Lessee shall be in compliance with all FCC requirements.

(b) Subsequent to the installation of the Lessee Facilities, City shall not permit its lessees or licensees to install new equipment on the Land or contiguous property which is owned or controlled by the City, if such equipment is likely to cause interference with Lessee's operations. Such interference shall be deemed a breach by City. Prior to the installation of any new equipment by City, TVF&R, future lessees or licensees, City agrees to provide Lessee not less than three (3) months prior written notice along with any relevant plans and specifications for Lessee's review. With respect to future lessees or licensees, Lessee shall review such plans and give its approval, request for changes, or in the event significant interference is likely to result, its refusal to approve the plans. Lessee's approval of the Equipment by other licensees or lessees ("Tenant") shall not be unreasonably withheld or delayed, but may be conditioned upon; (i) receipt of technical information and documentation from the Tenant, by Lessee, which may be reasonably needed in order to perform an analysis, and/or (ii) the implementation of specific measures by Tenant to assure that interference does not occur. Any such analysis or consent by Lessee shall not constitute a warranty that Tenant's Equipment shall not interfere with Lessee's operations. Both the City and Lessee agree to cooperate and use best efforts in accommodating any future lessees or licensees to the extent technologically feasible. In the event interference occurs, City agrees to take all reasonable steps necessary to eliminate such interference, in a reasonable time period. Nothing in this Agreement shall prohibit the City or the TVF&R from installing, upgrading, or operating their current radio and communication systems, or any future radio and communications systems.

**8. Taxes.** Lessee shall pay all personal and real property taxes on the Land that are attributable to Lessee Facilities.

**9. Waiver of Lessor's Lien.**

- (a) Lessor waives any lien rights it may have concerning the Lessee Facilities which are deemed Lessee's personal property and not fixtures. Lessee may remove such property at any time without the City's consent.
- (b) City acknowledges that Lessee has entered into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee Facilities (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection to these arrangements, the City consents to the installation of the Collateral; disclaims any interest in the Collateral, as fixtures or otherwise; and agrees that the Collateral shall be exempt from

execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due; and that the Collateral may be removed at any time without recourse by Lessee to legal proceedings.

**10. Termination.** This Agreement may be terminated without further liability on 30 days prior written notice as follows:

- (a) by either party upon a default of a term of this Agreement by the other party which is not cured within 60 days of receipt of written notice; or
- (b) by Lessee for any reason if Lessee delivers written notice of early termination to the City no later than 30 days prior to the Commencement Date; or
- (c) by Lessee if it does not obtain or maintain any license, permit or other approval necessary for the construction and operation of Lessee Facilities, or
- (d) by Lessee if Lessee is unable to occupy and utilize the Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or
- (e) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic or technological reasons, including without limitation, signal interference; or
- (f) by the City, any time after the completion of the second Renewal Term, so long as City provides written notice to the Lessee at least 60 days prior to the third Renewal Term.

**11. Destruction or Condemnation.** If the Premises or Lessee Facilities are damaged, destroyed, condemned or transferred in lieu of condemnation, Lessee may elect to terminate this Agreement as of the date of the damage, destruction, condemnation or transfer in lieu of condemnation. If Lessee chooses not to terminate this Agreement, Rent shall be reduced or abated in proportion to the actual reduction or abatement of use of the Premises.

**12. Insurance.** Lessee, at Lessee's sole cost and expense, shall procure and maintain on the Premises and on the Lessee Facilities, bodily injury and property damage insurance with a combined single limit of at least One Million Dollars per occurrence. This insurance shall insure, on an occurrence basis, against all liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises. The City, its officers, employees and agents shall be named as an additional insured on Lessee's policy. Lessee shall provide a certificate of insurance to the City evidencing the required coverage within 30 days of the Commencement Date.

**13. Assignment and Subletting.** Lessee may assign this Agreement or the Premises or any portion of the Premises to any entity, subject to the assignee assuming all of Lessee's obligations under this Agreement. Upon

assignment, Lessee shall be relieved of all future performance, liabilities, and obligations under this Agreement. Lessee may sublet this Agreement with the written consent of the City, such consent shall not be unreasonably withheld, conditioned or delayed. This Agreement shall run with the property and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives, heirs and assigns. Notwithstanding anything to the contrary in this Agreement, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without notice or consent, its interest in the Agreement to a financing entity or agent behalf of a financing entity to whom Lessee has obligations for borrowed money or in respect to guaranties for such obligations, has obligations evidenced by bonds, debentures, notes or similar instruments, or has obligations under or with respect to letters of credit, bankers, acceptances and similar facilities or in respect to such guarantees.

- 14. Warranty of Title and Quiet Enjoyment.** The City warrants that it owns the Land in fee simple, has rights of access to the Land, and that the Land is free and clear of all liens, encumbrances and restrictions. The City has full right to make and perform this Agreement and covenants and agrees with Lessee that upon Lessee paying the Rent and observing and performing all the terms, covenants and conditions on Lessee's part to be observed and performed, Lessee may peacefully and quietly enjoy the Premises. The City agrees to indemnify and hold harmless Lessee from all claims on Lessee's leasehold interest.
- 15. Repairs.** Lessee shall keep Lessee Facilities in a reasonable state of repair so that the Facilities are not unsightly or constitute a safety issue. If repairs are needed, Lessee shall make them within a reasonable time. Except as set forth in Paragraph 6(a), upon expiration or termination of this Agreement, Lessee shall restore the Premises to the condition in which it existed upon execution of this Agreement, reasonable wear and tear and loss by casualty or other causes beyond Lessee's control excepted.
- 16. Hazardous Substances.** Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. The City represents, warrants and agrees that neither the City nor, to the City's knowledge, any third party has used generated, stored or disposed of, or permitted the use, generation, storage or disposal of any Hazardous Material on, under, about or within the Land in violation of any law or regulation, and that the City will not and will not permit a third party to use, generate, store or dispose of any Hazardous Material on, under, about or within the Land in violation of any law or regulation. The City and Lessee each agree to defend, indemnify and hold harmless the other and the other's officers, employees, and agents against all losses, liabilities, claims and costs, including reasonable attorney's fees and costs arising from a breach of any representation, warranty or agreement contained in this

paragraph. As used in this Agreement, "Hazardous Material" means petroleum or petroleum product, asbestos, any substance known by the State of Oregon to cause cancer or reproductive toxicity, or any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state, or local law or regulation. This paragraph shall survive the termination of this Agreement.

#### 17. Miscellaneous.

- (a) This Agreement constitutes the entire agreement and understanding between the parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained in this Agreement. Amendments to this Agreement must be in writing and executed by both parties.
- (b) If any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to person other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.
- (c) This Agreement shall be binding and inure to the benefit of the successors and permitted assignees of the respective parties.
- (d) Any notice or demand required to be given in this Agreement shall be made by certified or registered mail, return receipt requested, or reliable overnight courier to the address of the parties set forth below:

**Lessee:**

Nextel West Corp.  
d/b/a Nextel Communications  
1750 112<sup>th</sup> Avenue NE, Suite C-100  
Bellevue, WA 98004

**City:** City of Tualatin  
18880 SW Martinazzi  
Tualatin, OR 97062  
Attn: Operations Director

**With a copy to:**

Nextel West Corp.  
d/b/a Nextel Communications  
1750 112<sup>th</sup> Avenue NE, Suite C-100  
Bellevue, WA 98004  
Attn: System Development Mgr.

**And a copy to:**

Nextel Communications, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191  
Mail Stop 6E630  
Attn: Site Leasing Services, Contracts Mgr.

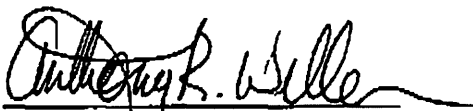
Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party. Notices shall be deemed received upon actual receipt.

- (e) This Agreement shall be governed by the laws of the State of Oregon.
- (f) The City agrees to execute and record a Memorandum of Agreement, attached as Exhibit C, in the official records of Washington County, Oregon.
- (g) Lessee may obtain title insurance on its interest in the Land. The City shall cooperate by executing documentation required by the title insurance company.
- (h) Where the approval or consent of a party is required, requested or otherwise to be given under this Agreement, such party shall not unreasonably delay or withhold its approval or consent.
- (i) All Riders and Exhibits attached to this Agreement are material parts of the Agreement.
- (j) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.


**LESSOR:**

City of Tualatin, Oregon  
an Oregon municipal corporation

By:   
Date: 3-13-00  
Title: Mayor Pro Tem  
Tax ID#: 93-6002269

**LESSEE:**

Nextel West Corp.  
a Delaware corporation,  
d/b/a Nextel Communications

By:   
Date: 3/10/2000  
Title: Vice President

STATE OF OREGON

COUNTY OF Washington

On 3-13-00, before me, the undersigned, a Notary Public for the state, personally appeared Tony Weller, personally known to me (or proved to me on the oath of \_\_\_\_\_, who is personally known to me) to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposes and says that he/she was present and saw \_\_\_\_\_, the same person described in and whose name is subscribed to the within and annexed instrument in his/her/their authorized capacity(ies) as a party thereto, execute the same, and that said affiant subscribed his/her name to the within instrument as a witness at the request of \_\_\_\_\_.

WITNESS my hand and official seal.

Maureen A Smith (SEAL)  
Notary Public



My commission expires: 7/4/2001

STATE OF ~~OREGON~~ Washington

COUNTY OF King Mary M. Murdoch

On March 10, 2000, before me, ~~Kasey D. Sebastian~~ Notary Public, personally appeared Mark B. Nelson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Mary M. Murdoch (SEAL)  
Notary Public



My commission expires: 10/1/01



**EXHIBIT A-1**

**DESCRIPTION OF LAND**

to the Agreement dated March 13, 2000, by and between the City of Tualatin, Oregon, an Oregon municipal corporation, as Lessor, and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, as Lessee.

The Land is described and/or depicted as follows:

APN: R0530134

The East 247 feet of Lot 11, GLENMORAG PARK, in the City of Tualatin, County of Washington and State of Oregon.

Initials
<i>[Handwritten Signature]</i>

EXHIBIT A-2

DESCRIPTION OF PREMISES

to the Agreement dated March 13, 2000, by and between the City of Tualatin, Oregon, an Oregon municipal corporation, as Lessor, and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, as Lessee.

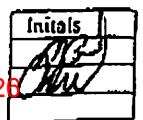
The Premises is described and/or depicted as follows (metes and bounds):

APN: R0530134

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, IN WASHINGTON COUNTY, OREGON, AND BEING A PORTION OF THAT PROPERTY DESCRIBED IN THE PRELIMINARY REPORT BY FIRST AMERICAN TITLE INSURANCE COMPANY OF OREGON, PRELIMINARY TITLE REPORT NO. 845557, DATED AUGUST 26, 1999, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 11 OF GLDMORAC PARK, THENCE SOUTH 01°26'10" WEST ALONG THE EAST LINE OF SAID LOT 11, 60.00 FEET; THENCE LEAVING SAID EAST LINE, NORTH 88°33'50" WEST, 60.00 FEET; THENCE NORTH 01°26'10" EAST, 60.00 FEET; THENCE SOUTH 88°33'50" EAST, 60.00 TO THE POINT OF BEGINNING.

CONTAINS 3,600 SQUARE FEET, MORE OR LESS.

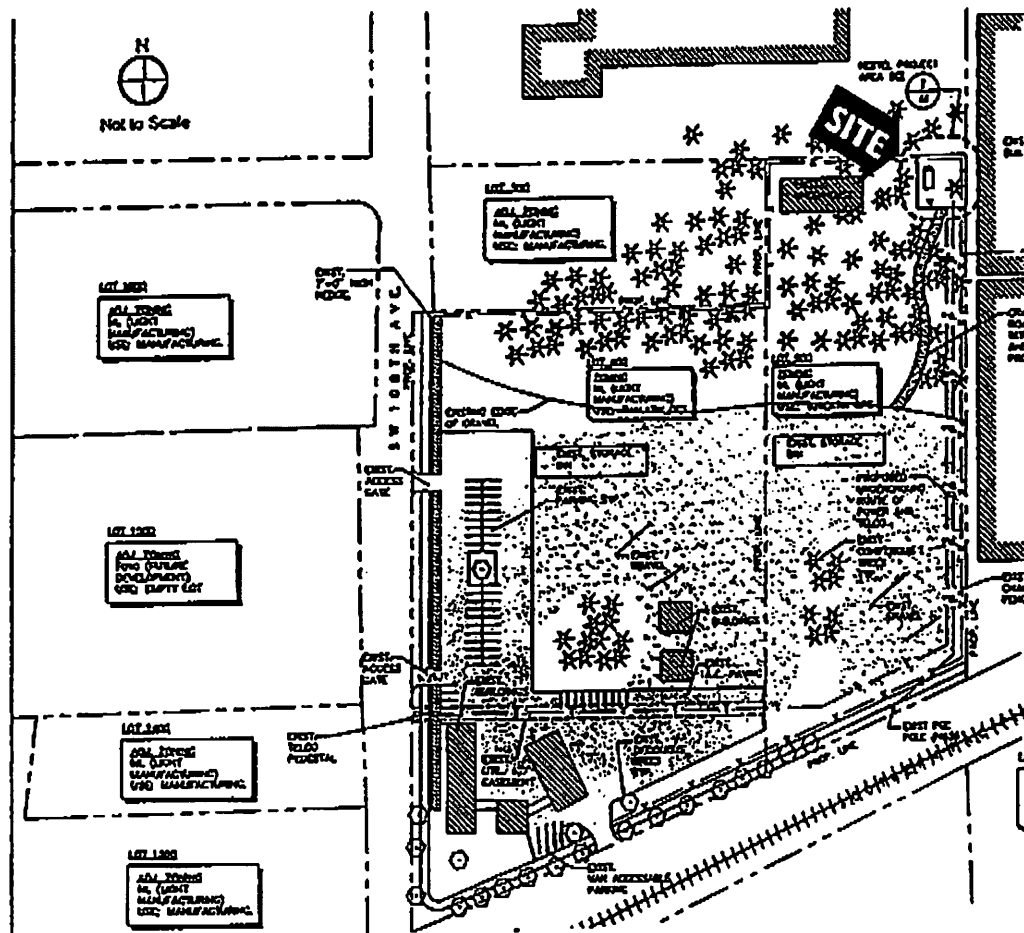


### EXHIBIT B

### DESCRIPTION OF PREMISES

to the Agreement dated March 13, 2000, by and between the City of Tualatin, Oregon, an Oregon municipal corporation, as Lessor and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, as Lessee.

The Premises are described and/or depicted as follows:



**Notes:**

1. This Exhibit may be replaced by a land survey of the Premises once it is received by Lessee.
2. Setback of the Premises from the Land's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number and mounting positions and locations of antennas and transmission lines are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.
5. The location of any utility easement is illustrative only. Actual location shall be determined by the servicing utility company in compliance with all local laws and regulations.

Initials
<i>[Handwritten Signature]</i>

**CLERK: Please return this document to:**  
Nextel West Corp.  
1750 112<sup>th</sup> Avenue NE, Suite C-100  
Bellevue, WA 98004  
Attn: Property Manager

**EXHIBIT C**

**MEMORANDUM OF AGREEMENT  
OR-0146-5  
APN: R0530134**

This Memorandum of Agreement is entered into on this \_\_\_\_\_ day of 2000, by and between the City of Tualatin, Oregon, an Oregon municipal corporation, with an address at 18880 SW Martinazzi, Tualatin, OR 97062 (hereinafter referred to as "Lessor") and Nextel West Corp., a Delaware corporation, d/b/a Nextel Communications, with an office at 1750 112<sup>th</sup> Avenue NE, Suite C-100, Bellevue, WA 98004 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into a Communications Site Lease Agreement ("Agreement") on the \_\_\_\_ day of \_\_\_\_\_, 2000, for the purpose of installing, operating and maintaining a radio communications facility and other improvements. All of the foregoing are set forth in the Agreement.
2. The term of the Agreement is for five (5) years commencing on ("Commencement Date"), and terminating on the fifth anniversary of the Commencement Date with three (3) successive five (5) year options to renew.
3. The Land which is the subject of the Agreement is described in Exhibit A annexed hereto. The portion of the Land being leased to Lessee (the "Premises") is described in Exhibits A-2 and B annexed hereto.

Initials
<i>[Handwritten Signature]</i>

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

**LESSOR:**  
City of Tualatin, Oregon,  
an Oregon municipal corporation

**LESSEE:**  
Nextel West Corp.  
a Delaware corporation,  
d/b/a Nextel Communications

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**SUBSCRIBING WITNESS:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Initials
<i>[Handwritten Signature]</i>
<i>[Handwritten Signature]</i>

STATE OF OREGON

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, the undersigned, a Notary Public for the state, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the oath of \_\_\_\_\_; who is personally known to me) to be the person whose name is subscribed to the within instrument, as a witness thereto, who, being by me duly sworn, deposes and says that he/she was present and saw \_\_\_\_\_, the same person described in and whose name is subscribed to the within and annexed instrument in his/her/their authorized capacity(ies) as a party thereto, execute the same, and that said affiant subscribed his/her name to the within instrument as a witness at the request of \_\_\_\_\_.

WITNESS my hand and official seal.

\_\_\_\_\_(SEAL)  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF OREGON

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_(SEAL)  
Notary Public

My commission expires: \_\_\_\_\_

Initials
<i>[Handwritten Signature]</i>

## THE FIRST AMENDMENT TO LEASE AGREEMENT

This **First Amendment to Communications Site Lease Agreement** (this "**Amendment**") is made effective as of the latter signature date hereof (the "**Effective Date**") by and between **City of Tualatin, Oregon, an Oregon municipal corporation ("Landlord")** and **Tower Asset Sub, Inc., a Delaware corporation ("Tenant")** (Landlord and Tenant being collectively referred to herein as the "**Parties**").

### RECITALS

**WHEREAS**, Landlord owns the real property described on **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"); and

**WHEREAS**, Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain **Communications Site Lease Agreement** dated **March 13, 2000** (as the same may have been amended from time to time, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "**Leased Premises**"), which Leased Premises are also described on **Exhibit A**; and

**WHEREAS**, Landlord and Tenant desire to amend the terms of the Lease to extend the term thereof and to otherwise modify the Lease as expressly provided herein.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. One-Time Payment.** Tenant shall pay to Landlord a one-time payment in the amount of [REDACTED], payable within thirty (30) days of the Effective Date and subject to the following conditions precedent: (a) Tenant's receipt of this Amendment executed by Landlord, on or before **September 31, 2017**; (b) Tenant's confirmation that Landlord's statements as further set forth in this Amendment are true, accurate, and complete, including verification of Landlord's ownership; (c) Tenant's receipt of any documents and other items reasonably requested by Tenant in order to effectuate the transaction and payment contemplated herein; and (d) receipt by Tenant of an original Memorandum (as defined herein) executed by Landlord.
- 2. Lease Term Extended.** Notwithstanding anything to the contrary contained in the Lease or this Amendment, the Parties agree the Lease originally commenced on **April 1, 2000** and, without giving effect to the terms of this Amendment but assuming the exercise by Tenant of all remaining renewal options contained in the Lease (each an "**Existing Renewal Term**" and, collectively, the "**Existing Renewal Terms**"), the Lease is otherwise scheduled to expire on **March 31, 2020**. In addition to any Existing Renewal Term(s), the Lease is hereby amended to provide Tenant with the option to extend the Lease for each of **four (4) additional five (5) year renewal terms** (each a "**New Renewal Term**" and, collectively, the "**New Renewal Terms**"). Notwithstanding anything to the contrary contained in the Lease, (a) all Existing Renewal Terms and New Renewal Terms shall automatically renew unless Tenant notifies Landlord that Tenant elects not to renew the Lease at least sixty (60) days prior to the commencement of the next Renewal Term (as defined below) and (b) Landlord shall be able to terminate this Lease only in the event of a material default by Tenant, which default is not cured within sixty (60) days of Tenant's receipt of written notice thereof, provided, however, in the event that Tenant has diligently commenced to cure a material default within sixty (60) days of Tenant's actual receipt of notice thereof and reasonably requires additional time beyond the sixty (60) day cure period described herein to effect such cure, Tenant shall have such additional time as is necessary (beyond the sixty [60] day cure period) to effect the cure. References in this Amendment to "**Renewal Term**" shall refer, collectively, to

the Existing Renewal Term(s) and the New Renewal Term(s). The Landlord hereby agrees to execute and return to Tenant an original Memorandum of Lease in the form and of the substance attached hereto as **Exhibit B** and by this reference made a part hereof (the "**Memorandum**") executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.

3. **Rent and Escalation.** Commencing on **April 1, 2020**, the rent payable from Tenant to Landlord under the Lease is hereby increased to [REDACTED] per month (the "**Rent**"). Commencing on **April 1, 2021** and on each successive annual anniversary thereof (the "**Increase Date**"), [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

In the event of any overpayment of Rent or Collocation Fee (as defined below) prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount. Notwithstanding anything to the contrary contained in the Lease, all Rent and any other payments expressly required to be paid by Tenant to Landlord under the Lease and this Amendment shall be paid to **City of Tualatin, Oregon**. The escalations in this Section shall be the only escalations to the Rent and any/all rental escalations otherwise contained in the Lease are hereby null and void and of no further force and effect.

4. **Revenue Share.**

- a. Subject to the other applicable terms, provisions, and conditions of this Section, Tenant shall pay Landlord [REDACTED] of any rents actually received by Tenant under and pursuant to the terms and provisions of any new sublease, license or other collocation agreement for the use of any portion of the Leased Premises entered into by and between Tenant and a third party (any such third party, the "**Additional Collocator**") beginning **Effective Date** (any such amounts, the "**Collocation Fee**"). Notwithstanding the foregoing, Landlord shall not be entitled to receive any portion of any sums paid by a licensee or sublessee to reimburse Tenant, in whole or in part, for any improvements to the Leased Premises or any structural enhancements to the tower located on the Leased Premises (such tower, the "**Tower**"), or for costs, expenses, fees, or other charges incurred or associated with the development, operation, repair, or maintenance of the Leased Premises or the Tower. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- b. The initial payment of the Collocation Fee shall be due within thirty (30) days of actual receipt by Tenant of the first collocation payment paid by an Additional Collocator. In the event a sublease or license with an Additional Collocator expires or terminates, Tenant's obligation to pay the Collocation Fee for such sublease or license shall automatically terminate upon the date of such expiration or termination. Notwithstanding anything contained herein to the contrary, Tenant shall have no obligation to pay to Landlord and Landlord hereby agrees not to demand or request that



Tenant pay to Landlord any Collocation Fee in connection with the sublease to or transfer of Tenant's obligations and/or rights under the Lease, as modified by this Amendment, to any subsidiary, parent or affiliate of Tenant.

- c. Landlord hereby acknowledges and agrees that Tenant has the sole and absolute right to enter into, renew, extend, terminate, amend, restate, or otherwise modify (including, without limitation, reducing rent or allowing the early termination of) any future or existing subleases, licenses or collocation agreements for occupancy on the Tower, all on such terms as Tenant deems advisable, in Tenant's sole and absolute discretion, notwithstanding that the same may affect the amounts payable to the Landlord pursuant to this Section.
- d. Notwithstanding anything to the contrary contained herein, Landlord hereby acknowledges and agrees that Tenant shall have no obligation to pay and shall not pay to Landlord any Collocation Fee in connection with: (i) any subleases, licenses, or other collocation agreements between Tenant, or Tenant's predecessors-in-interest, as applicable, and any third parties, or such third parties' predecessors or successors-in-interest, as applicable, entered into prior to the Effective Date (any such agreements, the "*Existing Agreements*"); (ii) any amendments, modifications, extensions, renewals, and/or restatements to and/or of the Existing Agreements entered into prior to the Effective Date or which may be entered into on or after the Effective Date; (iii) any subleases, licenses, or other collocation agreements entered into by and between Tenant and any Additional Collocators for public emergency and/or safety system purposes that are required or ordered by any governmental authority having jurisdiction at or over the Leased Premises; or (iv) any subleases, licenses or other collocation agreements entered into by and between Tenant and any Additional Collocators if the Landlord has entered into any agreements with such Additional Collocators to accommodate such Additional Collocators' facilities outside of the Leased Premises and such Additional Collocators pay any amounts (whether characterized as rent, additional rent, use, occupancy or other types of fees, or any other types of monetary consideration) to Landlord for such use.

5. **Landlord and Tenant Acknowledgments.** Except as modified herein, the Lease and all provisions contained therein remain in full force and effect and are hereby ratified and affirmed. The parties hereby agree that no defaults exist under the Lease. To the extent Tenant needed consent and/or approval from Landlord for any of Tenant's activities at and uses of the site prior to the Effective Date, Landlord's execution of this Amendment is and shall be considered consent to and approval of all such activities and uses. Landlord hereby acknowledges and agrees that Tenant shall not need consent or approval from, or to provide notice to, Landlord for any future activities at or uses of the Leased Premises, including, without limitation, subleasing and licensing to additional customers, installing, modifying, repairing, or replacing improvements within the Leased Premises, and/or assigning all or any portion of Tenant's interest in this Lease, as modified by this Amendment. Tenant and Tenant's sublessees and customers shall have vehicular (specifically including truck) and pedestrian access to the Leased Premises from a public right of way on a 24 hours per day, 7 days per week basis, together with utilities services to the Leased Premises from a public right of way. Upon request by Tenant and at Tenant's sole cost and expense but without additional consideration owed to Landlord, Landlord hereby agrees to promptly execute and return to Tenant building permits, zoning applications and other forms and documents, including a memorandum of lease, as required for the use of the Leased Premises by Tenant and/or Tenant's customers, licensees, and sublessees. Landlord hereby appoints Tenant as Landlord's attorney-in-fact coupled with an interest to prepare, execute and deliver land use and zoning and building permit applications that concern the Leased Premises, on behalf of Landlord with federal, state and local governmental authorities, provided that such applications shall be limited strictly to the use of the Leased Premises as a wireless telecommunications facility and that such attorney-in-fact shall

not allow Tenant to re-zone or otherwise reclassify the Leased Premises or the Parent Parcel. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.

6. **Limited Right of First Refusal.** Notwithstanding anything to the contrary contained herein, this paragraph shall not apply to any fee simple sale of the Parent Parcel from Landlord to any prospective purchaser that is not a Third Party Competitor (as herein defined). If Landlord receives an offer or desires to offer to: (i) sell or convey any interest (including, but not limited to, leaseholds or easements) in any real property of which the Leased Premises is a part to any person or entity directly or indirectly engaged in the business of owning, acquiring, operating, managing, investing in or leasing wireless telecommunications infrastructure (any such person or entity, a "**Third Party Competitor**") or (ii) assign all or any portion of Landlord's interest in the Lease to a Third Party Competitor (any such offer, the "**Offer**"), Tenant shall have the right of first refusal to purchase the real property or other interest being offered by Landlord in connection with the Offer on the same terms and conditions. If Tenant elects, in its sole and absolute discretion, to exercise its right of first refusal as provided herein, Tenant must provide Landlord with notice of its election not later than forty-five (45) days after Tenant receives written notice from Landlord of the Offer. If Tenant elects not to exercise Tenant's right of first refusal with respect to an Offer as provided herein, Landlord may complete the transaction contemplated in the Offer with the Third Party Competitor on the stated terms and price but with the express condition that such sale is made subject to the terms of the Lease, as modified by this Amendment. Landlord hereby acknowledges and agrees that any sale or conveyance by Landlord in violation of this Section is and shall be deemed to be null and void and of no force and effect. The terms, provisions, and conditions of this Section shall survive the execution and delivery of this Amendment.
  
7. **Landlord Statements.** Landlord hereby represents and warrants to Tenant that: (i) to the extent applicable, Landlord is duly organized, validly existing, and in good standing in the jurisdiction in which Landlord was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in each other jurisdiction in which such qualifications are required; (ii) Landlord has the full power and authority to enter into and perform its obligations under this Amendment, and, to the extent applicable, the person(s) executing this Amendment on behalf of Landlord, have the authority to enter into and deliver this Amendment on behalf of Landlord; (iii) no consent, authorization, order, or approval of, or filing or registration with, any governmental authority or other person or entity is required for the execution and delivery by Landlord of this Amendment; (iv) Landlord is the sole owner of the Leased Premises and all other portions of the Parent Parcel; (v) to the best of Landlord's knowledge, there are no agreements, liens, encumbrances, claims, claims of lien, proceedings, or other matters (whether filed or recorded in the applicable public records or not) related to, encumbering, asserted against, threatened against, and/or pending with respect to the Leased Premises or any other portion of the Parent Parcel which do or could (now or any time in the future) adversely impact, limit, and/or impair Tenant's rights under the Lease, as amended and modified by this Amendment; and (vi) the square footage of the Leased Premises is the greater of Tenant's existing improvements on the Parent Parcel or the land area conveyed to Tenant under the Lease. The representations and warranties of Landlord made in this Section shall survive the execution and delivery of this Amendment. Landlord hereby does and agrees to indemnify Tenant for any damages, losses, costs, fees, expenses, or charges of any kind sustained or incurred by Tenant as a result of the breach of the representations and warranties made herein or if any of the representations and warranties made herein prove to be untrue. The aforementioned indemnification shall survive the execution and delivery of this Amendment.
  
8. **Confidentiality.** Notwithstanding anything to the contrary contained in the Lease or in this Amendment, Landlord agrees and acknowledges that all the terms of this Amendment and the Lease and any information furnished to Landlord by Tenant in connection therewith shall be and remain confidential.

Except with Landlord's family, attorney, accountant, broker, lender, a prospective fee simple purchaser of the Parent Parcel, or if otherwise required by law, Landlord shall not disclose any such terms or information without the prior written consent of Tenant. The terms and provisions of this Section shall survive the execution and delivery of this Amendment.

9. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: **City of Tualatin, Oregon, 18880 SW Martinazzi Avenue, Tualatin, OR 97062**; to Tenant at: Attn.: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn.: Legal Dept., 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
10. **Counterparts.** This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.
11. **Governing Law.** Notwithstanding anything to the contrary contained in the Lease and in this Amendment, the Lease and this Amendment shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.
12. **Waiver.** Notwithstanding anything to the contrary contained herein, in no event shall Landlord or Tenant be liable to the other for, and Landlord and Tenant hereby waive, to the fullest extent permitted under applicable law, the right to recover incidental, consequential (including, without limitation, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.
13. **Tenant's Securitization Rights; Estoppel.** Landlord hereby consents to the granting by Tenant of one or more leasehold mortgages, collateral assignments, liens, and/or other security interests (collectively, a "**Security Interest**") in Tenant's interest in this Lease, as amended, and all of Tenant's property and fixtures attached to and lying within the Leased Premises and further consents to the exercise by Tenant's mortgagee ("**Tenant's Mortgagee**") of its rights to exercise its remedies, including without limitation foreclosure, with respect to any such Security Interest. Landlord shall recognize the holder of any such Security Interest of which Landlord is given prior written notice (any such holder, a "**Holder**") as "Tenant" hereunder in the event a Holder succeeds to the interest of Tenant hereunder by the exercise of such remedies. Landlord further agrees to execute a written estoppel certificate within thirty (30) days of written request of the same by Tenant or Holder.
14. **Taxes.** The Parties hereby agree that Section 8 of the Lease is deleted in its entirety. During the term of the Lease, Landlord shall pay when due all real property, personal property, and other taxes, fees and assessments attributable to the Parent Parcel, including the Leased Premises. Tenant hereby agrees to reimburse Landlord for any personal property taxes in addition to any increase in real property taxes levied against the Parent Parcel, to the extent both are directly attributable to Tenant's improvements on

the Leased Premises (but not, however, taxes or other assessments attributable to periods prior to the Effective Date), provided, however, that Landlord must furnish written documentation (the substance and form of which shall be reasonably satisfactory to Tenant) of such personal property taxes or real property tax increase to Tenant along with proof of payment of same by Landlord. Anything to the contrary notwithstanding, Tenant shall not be obligated to reimburse Landlord for any applicable taxes unless Landlord requests such reimbursement within one (1) year after the date such taxes became due. Landlord shall submit requests for reimbursement in writing to: *American Tower Corporation, Attn: Landlord Relations, 10 Presidential Way, Woburn, MA 01801* unless otherwise directed by Tenant from time to time. Subject to the requirements set forth in this Section, Tenant shall make such reimbursement payment within forty-five (45) days of receipt of a written reimbursement request from Landlord. Tenant shall pay applicable personal property taxes directly to the local taxing authority to the extent such taxes are billed and sent directly by the taxing authority to Tenant. If Landlord fails to pay when due any taxes affecting the Parent Parcel as required herein, Tenant shall have the right, but not the obligation, to pay such taxes on Landlord's behalf and: (i) deduct the full amount of any such taxes paid by Tenant on Landlord's behalf from any future payments required to be made by Tenant to Landlord hereunder; (ii) demand reimbursement from Landlord, which reimbursement payment Landlord shall make within thirty (30) days of such demand by Tenant; and/or (iii) collect from Landlord any such tax payments made by Tenant on Landlord's behalf by any lawful means.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

**LANDLORD:**

**City of Tualatin, Oregon  
an Oregon municipal corporation**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*[SIGNATURES CONTINUE ON FOLLOWING PAGE]*

**TENANT:**

**Tower Asset Sub, Inc.**  
**a Delaware corporation**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

*This Exhibit A may be replaced at Tenant's option as described below.*

**PARENT PARCEL**

*Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.*

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below.

**EXHIBIT A (Continued)**  
**LEASED PREMISES**

*Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.*

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The square footage of the Leased Premises shall be the greater of: (i) the land area conveyed to Tenant in the Lease; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

***A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, CITY OF TUALATIN, WASHINGTON COUNTY, OREGON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:***

***BEGINNING AT THE NORTHEAST CORNER OF LOT 11, "GLENMORAG PARK"; THENCE ALONG THE EAST LINE OF SAID LOT 11, S01°23'18"W, A DISTANCE OF 60.00 FEET; THENCE LEAVING SAID EAST LINE, N88°05'14"W, A DISTANCE OF 60.00 FEET; THENCE N01°23'18"E, A DISTANCE OF 60.00 TO THE NORTH LINE OF SAID LOT 11; THENCE ALONG THE NORTH LINE OF SAID LOT 11, S88°05'14"E, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.***



**EXHIBIT A (Continued)**  
**ACCESS AND UTILITIES**

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way including but not limited to:

*TOGETHER WITH A 20 FOOT ACCESS AND UTILITY EASEMENT OVER, ACROSS OR THROUGH THE EAST PORTION OF LOTS 11, 12 AND 13, "GLENMORAG PARK", SITUATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, CITY OF TUALATIN, WASHINGTON COUNTY, OREGON, THE CENTERLINE OF SAID EASEMENT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:*

*BEGINNING AT A POINT BEING S01°23'18"W, A DISTANCE OF 60.00 FEET AND N88°05'14"W, A DISTANCE OF 47.09 FEET FROM THE NORTHEAST CORNER OF SAID LOT 11; THENCE S11°04'34"W, A DISTANCE OF 186.33 FEET; THENCE S30°43'39"W, A DISTANCE OF 161.21 FEET; THENCE S06°27'58"W, A DISTANCE OF 162.15 FEET; THENCE S08°36'31"W, A DISTANCE OF 120.65 FEET; THENCE S11°24'13"E, A DISTANCE OF 19.50 FEET TO THE NORTH RIGHT OF WAY LINE OF S.W. HERMAN ROAD (40 FEET WIDE).*

# **EXHIBIT B**

## **FORM OF MEMORANDUM OF LEASE**

**Prepared by and Return to:**

American Tower  
10 Presidential Way  
Woburn, MA 01801  
Attn: Land Management/Sean Chen, Esq.  
ATC Site No: 308345  
ATC Site Name: King City OR 1  
Assessor's Parcel No(s): R0530189

---

**MEMORANDUM OF LEASE**

This Memorandum of Lease (the "**Memorandum**") is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_ by and between **City of Tualatin, Oregon, an Oregon municipal corporation ("Landlord")** and **Tower Asset Sub, Inc., a Delaware corporation ("Tenant")**.

**NOTICE** is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

1. **Parent Parcel and Lease.** Landlord is the owner of certain real property being described in **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"). Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain **Communications Site Lease Agreement** dated **March 13, 2000** (as the same may have been amended from time to time, collectively, the "**Lease**"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "**Leased Premises**"), which Leased Premises is also described on **Exhibit A**.
2. **Expiration Date.** Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be **March 31, 2040**. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.
3. **Leased Premises Description.** Tenant shall have the right, exercisable by Tenant at any time during the original or renewal terms of the Lease, to cause an as-built survey of the Leased Premises to be prepared and, thereafter, to replace, in whole or in part, the description(s) of the Leased Premises set forth on **Exhibit A** with a legal description or legal descriptions based upon such as-built survey. Upon Tenant's request, Landlord shall execute and deliver any documents reasonably necessary to effectuate such replacement, including, without limitation, amendments to this Memorandum and to the Lease.
4. **Right of First Refusal.** There is a right of first refusal in the Lease.

5. **Effect/Miscellaneous.** This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.
  
6. **Notices.** All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: **City of Tualatin, Oregon, 18880 SW Martinazzi Avenue, Tualatin, OR 97062**; to Tenant at: Attn.: Land Management 10 Presidential Way, Woburn, MA 01801, with copy to: Attn.: Legal Dept., 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
  
7. **Counterparts.** This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
  
8. **Governing Law.** This Memorandum shall be governed by and construed in all respects in accordance with the laws of the State or Commonwealth in which the Leased Premises is situated, without regard to the conflicts of laws provisions of such State or Commonwealth.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have each executed this Memorandum as of the day and year set forth below.

**LANDLORD**

**2 WITNESSES**

**City of Tualatin, Oregon  
an Oregon municipal corporation,**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**WITNESS AND ACKNOWLEDGEMENT**

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[SEAL]

*[SIGNATURES CONTINUE ON FOLLOWING PAGE]*

**TENANT**

**WITNESS**

**Tower Asset Sub, Inc.**  
**a Delaware corporation**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**WITNESS AND ACKNOWLEDGEMENT**

Commonwealth of Massachusetts

County of Middlesex

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me, \_\_\_\_\_  
the undersigned Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed  
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their  
authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity  
upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[SEAL]

**EXHIBIT A**

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***BEGINNING AT THE NORTHEAST CORNER OF LOT 11, "GLENMORAG PARK"; THENCE ALONG THE EAST LINE OF SAID LOT 11, S01°23'18"W, A DISTANCE OF 60.00 FEET; THENCE LEAVING SAID EAST LINE, N88°05'14"W, A DISTANCE OF 60.00 FEET; THENCE N01°23'18"E, A DISTANCE OF 60.00 TO THE NORTH LINE OF SAID LOT 11; THENCE ALONG THE NORTH LINE OF SAID LOT 11, S88°05'14"E, A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING.***



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*TOGETHER WITH A 20 FOOT ACCESS AND UTILITY EASEMENT OVER, ACROSS OR THROUGH THE EAST PORTION OF LOTS 11, 12 AND 13, "GLENMORAG PARK", SITUATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 SOUTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, CITY OF TUALATIN, WASHINGTON COUNTY, OREGON, THE CENTERLINE OF SAID EASEMENT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:*

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# STAFF REPORT

## CITY OF TUALATIN

**TO:** Tualatin Planning Commissioners

**FROM:** Charles Benson, Associate Planner

**DATE:** 11/16/2017

**SUBJECT:** Consideration of a Variance to the Wireless Communication Facility (WCF) Separation Requirement for the POR Durham project in the Light Manufacturing (ML) Planning District at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) (VAR-17-0001) (RESO TDC 609-17).

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### **ISSUE BEFORE TPC:**

The issue before the Tualatin Planning Commission (TPC) is consideration of a Variance request for a Wireless Communication Facility (WCF), POR Durham, to locate at 10290 SW Tualatin Road within 1,500 feet of an existing WCF. A separate Architectural Review decision will review the construction of a new 100-foot-tall monopole with antennas mounted at the top and opportunities for ancillary ground equipment. The existing WCF is located at 10699 SW Herman Road approximately 750 feet southwest of the proposed WCF location (see Attachment A).

### **RECOMMENDATION:**

Staff recommends that the Tualatin Planning Commission (TPC) consider the staff report and supporting attachments and grant a variance based on the analysis and findings of the variance criteria.

### **EXECUTIVE SUMMARY:**

Acom Consulting, Inc. proposes to construct a new unmanned wireless communication facility (WCF) on behalf of Lendlease (US) Telecom Holdings LLC - c/o PI Tower Development LLC, Verizon Wireless, and the property owner, Tote 'N Stow, Inc. on the southwest corner of 10290 SW Tualatin Road. The proposed WCF would include a new 100-foot monopole support tower with antennas mounted at the top and opportunities for ancillary ground equipment including equipment cabinets, natural gas generator, cabling and ice bridge will be located below in a new 25' x 48' secure fenced lease area surrounding the tower. It is anticipated that the proposed WCF will generate approximately 1-2 visits per month from a site technician.

The proposed WCF would be located on an approximately 3.6-acre parcel (Washington County Tax Lot 2S1 23B 000800), the southern of two lots that comprise the entire Tote 'N Stow property. The Tote 'N Stow provides a range of covered and open storage services for recreational vehicles and the proposed WCF would be located on a paved area in the southwest corner of the project site and would not affect existing storage operations. The subject lot and neighboring properties on all sides are located in the City of Tualatin's Light

Manufacturing (ML) Planning District, which generally extends northward to SW Tualatin Road, eastward to SW 100th Court, southward to SW Herman Road, and westward to SW 108th Avenue.

A pre-application conference for this project was held on March 23, 2017. A neighborhood/developer meeting—as required by Tualatin Development Code (TDC) 31.063—was held on May 10, 2017, commencing at 5:30 PM at the Juanita Pohl Center, 8513 SW Tualatin Road, Tualatin, OR 97062. Meeting attendees included members from the project team, one representative from the City of Tualatin, and 14 members from the community.

As the proposed WCF would be located within 1,500 feet of an existing WCF at 10699 SW Herman Road, the proposed WCF requires a variance by the Tualatin Planning Commission (TPC) from the provisions of Tualatin Development Code (TDC) 73.470(9), which requires a 1,500-foot separation between WCFs (see Attachment B, Variance Application).

As stated in TDC Section 33.025(1): "(1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b)." The applicant has chosen to demonstrate compliance with TDC Section 33.025(1)(a)(i) through (iii), and staff have reviewed the application materials included pertinent excerpts in Attachment C, Analysis & Findings, a summary of which is included below.

To grant the requested variance, the TPC must find the applicant has demonstrated compliance with the following:

**TDC 33.025(1)(a): Coverage and Capacity**

**(i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report.**

The applicant states that the potential sites outside of the 1,500-foot radius from the existing WCF at 10699 SW Herman Road were eliminated from consideration due to the lack of adequacy of service improvements from these locations and their close proximity to residential areas where these facilities are not permitted or where visual impacts may occur. The applicant also noted that the existing WCF at 10699 SW Herman Road was not a suitable location due to interference from trees surrounding this site (which would affect coverage) and the applicant provided a RF Engineer Interference Letter in addition to the required RF report.

**(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider.**

The applicant states that modifications to the existing WCF at 10699 SW Herman Road required to host the proposed antennas would result in greater impacts than those of constructing an entirely new monopole structure at the proposed Tote 'N Stow site, namely increasing the height of the 146-foot-tall existing WCF (which required a variance to permit its construction in 2000) or the topping or removal of trees that were preserved as a condition of that variance (VAR-99-02). The maximum permitted height of WCFs in the Light Manufacturing (ML) Planning

District is 100 feet and the proposed WCF would not require a height variance.

**(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.**

Staff has confirmed via study area reconnaissance that no such structures exist in the immediate area, noting that maximum structure height in ML Planning Districts (outside of flagpoles and WCFs) is 50 feet.

Staff finds that VAR-17-0001 meets the criteria of TDC 33.025(1)(a).

Staff received one public comment letter voicing concerns about this proposal prior to the scheduled public hearing for this application, which is included as Attachment E.

### **OUTCOMES OF DECISION:**

Approval of VAR-17-0001 and Resolution TDC 609-17 would result in the following:

- Allows the applicant to locate a Wireless Communication Facility (WCF) at 10290 SW Tualatin Road; and
- Allows staff to review an Architectural Review (AR) for the proposed WCF project with an appropriate location.

Denial of VAR-17-0001 would result in the following:

- Prohibits the applicant from locating a WCF at 10290 SW Tualatin Road.

### **ALTERNATIVES TO RECOMMENDATION:**

The Tualatin Planning Commission (TPC) has three options:

1. Approve the proposed variance (VAR-17-0001);
2. Deny the proposed variance with findings that state which criteria in Tualatin Development Code (TDC) 33.025(1) the applicant fails to meet; or
3. Continue the discussion of the proposed variance and return to the matter at a later date.

### **FINANCIAL IMPLICATIONS:**

The Fiscal Year 2017/18 budget allocated revenue to process current planning applications, and the applicant submitted payment per the City of Tualatin Fee Schedule to process the application.

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**Attachments:**    [Attachment A - Vicinity Map](#)  
                          [Attachment B - Variance Application](#)  
                          [Attachment C - Analysis & Findings](#)  
                          [Attachment D - Powerpoint Presentation](#)  
                          [Attachment E - Public Comments](#)

# POR DURHAM WIRELESS COMMUNICATION FACILITY

## VARIANCE APPLICATION

### ATTACHMENT A: VICINITY MAP





# City of Tualatin

www.tualatinoregon.gov

## APPLICATION FOR VARIANCE

Information			
Name: Reid Stewart		Title: Consultant/Agent	
Company Name: Acom Consulting, Inc.			
Current address: 4015 SW Battaglia Avenue			
City: Gresham		State: OR	ZIP Code: 97080
Phone: 503.720.6526	Fax: N/A	Email: reid.stewart@acomconsultinginc.com	
Applicant			
Name: Brandon Olsen		Company Name: Lendlease (US) Telecom Holdings LLC	
Address: 909 Lake Carolyn Parkway c/o PI Tower Development LLC			
City: Irving		State: TX	ZIP Code: 75039
Phone: 503.951.7515	Fax: N/A	Email: brandon.olsen@pitowers.com	
Applicant's Signature: See attached LOA			Date:
Property Owner			
Name: TOTE-N-STOW INC. - Joana Freedman			
Address: 10290 SW Tualatin Road			
City: Tualatin		State: OR	ZIP Code: 97062
Phone: 503.692.3930	Fax: N/A	Email:	
Property Owner's Signature: See attached LOA			Date
<b>(Note: Letter of authorization is required if not signed by owner)</b>			
Architect			
Name: Rick Matteson			
Address: 5200 SW Meadows Road, Suite 150			
City: Lake Oswego		State: OR	ZIP Code: 97035
Phone: 425.209.6723	Fax: N/A	Email: rick.matteson@acomconsultinginc.com	
Landscape Architect			
Name: N/A			
Address:			
City:		State:	ZIP Code:
Phone:	Fax: N/A	Email:	
Engineer			
Name: TBD			
Address:			
City:		State:	ZIP Code:
Phone:	Fax: N/A	Email:	
Project			
Project Title: POR Durham			
Address: 10290 SW Tualatin Road			
City: Tualatin		State: OR	ZIP Code: 97062
Brief Project Description: New 100' monopole associated with new wireless communications facility			
Proposed Use: Wireless communications facility			

Value of Improvements:

**\$130,000**

**AS THE PERSON RESPONSIBLE FOR THIS APPLICATION, I HEREBY ACKNOWLEDGE THAT I HAVE READ THIS APPLICATION AND STATE THAT THE INFORMATION ABOVE, ON THE FACT SHEET, AND THE SURROUNDING PERTY OWNER MAILING LIST IS CORRECT. I AGREE TO COMPLY WITH ALL APPLICABLE CITY AND COUNTY ORDINANCES AND STATE LAWS REGARDING BUILDING CONSTRUCTION AND LAND USE.**

Applicant's Signature:

Date:

### Office Use

Case No:	Date Received:	Received by:
Fee: Complete Review:	Receipt No:	
Application Complete as of:	ARB hearing date (if applicable):	
Posting Verification:	6 copies of drawings (folded)	
1 reproducible 8 ½" X 11" vicinity map	1 reproducible 8 ½" X 11" site, grading, LS, Public Facilities plan	
Neighborhood/Developer meeting materials		

APPLICATION FOR  
VARIANCE

**UNMANNED WIRELESS  
TELECOMMUNICATIONS  
FACILITY AT:**

10290 SW Tualatin Road  
Tualatin, OR 97062

**Prepared By**



**Date**  
October 03, 2017

**Project Name**  
POR Durham





Applicant: Lendlease (US) Telecom Holdings LLC  
c/o PI Tower Development LLC  
909 Lake Carolyn Parkway  
Irving, TX 75039

Co-Applicant: Verizon Wireless (VAW), LLC dba, Verizon Wireless  
5430 NE 122<sup>nd</sup> Avenue  
Portland, OR 97230

Representative: Acom Consulting, Inc.  
Reid Stewart  
5200 SW Meadows Road, Suite 150  
Lake Oswego, OR 97035

Property Owner: Tote 'N Stow, Inc.  
10290 SW Tualatin Road  
Tualatin, OR 97062

Project Information:  
Site Address: 10290 SW Tualatin Road, Tualatin, OR 97062  
Parcel: 2S123B000800  
Parcel Area: 3.63 acres  
Zone Designation: ML (Light Manufacturing Planning District)  
Existing Use: Storage Facility  
Project Area: 1,200 square foot lease area (25' x 48' fenced equipment area)

**Chapter 33: Variances**

**Section 33.025 – Criteria for Granting a Variance for a Wireless Communication Facility.**

*No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.*

- (1) *The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.*
  - (a) *coverage and capacity.*
    - (i) *It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not*

*denied. The needed capacity or coverage shall be documented with a Radio Frequency report;*

**Response:** Verizon Wireless, the co-applicant, has done extensive research looking at opportunities in the area to collocate on existing towers or buildings, as that is always a preferred option when available. If an existing tower or structure is not available at the specified height or not attainable because of space constraints or unreliable structural design, then Verizon Wireless will propose a new tower. In this instance, there is one existing tower, the ATC tower, which is located outside of the search area designated as usable by Verizon Wireless' RF department, but within the 1,500-foot radius of the proposed facility. This tower is not viable as a solution to meet their coverage and capacity objectives due to the existing trees that would cause interference. There are no other existing towers available to collocate on within the area of interest thus a new tower is being proposed, which will in turn be available for other providers to collocate on in the future.

In order to meet the Verizon's coverage and capacity objectives, it is necessary to site a tower within the search ring provided by Verizon's RF department as shown below. Moving outside this search ring is technically not practicable and has adverse effects on providing the needed coverage and capacity objectives the tower is intended to provide, which include nearby high-traffic residential areas to the North. Siting outside the search ring can also create interference with other nearby network sites where coverage may overlap.

The Applicant is requesting a variance to the 1,500-foot tower separation requirement. There is an existing 146-foot ATC monopole support structure outside of the search ring, approximately 750 feet to the SW of the proposed support tower, located at 10699 SW Herman Road. Per the tower owner, there is currently available space on the tower at the 100-foot level, however this is not high enough to avoid interference from multiple trees surrounding the tower and still meet coverage and capacity objectives to the North, as detailed in the attached RF Usage and Facility Justification Report and RF Engineer Interference Letter.

Locating the tower within the search ring and outside the 1,500-foot radius of the nearby existing ATC tower is also not a desirable alternative as it would mean locating in another part of the ML zone without existing screening or in the RML or RMH zone, where a conditional use permit would be required and where it would be very visible to nearby residential areas.

In addition, T-Mobile has also indicated that they intend on co-locating on the proposed WCF, if approved, as the existing ATC tower to the SW will not meet their coverage and capacity requirements either as noted in the attached Letter from T-Mobile RF.

*(ii) The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and,*

**Response:** The only existing monopole tower located within 1,500 feet of the proposed location cannot be modified as it is not designed to be extended to the necessary height required to avoid interference from the tall trees currently surrounding the tower. The existing tower would need to be removed and replaced with a new tower at least 20-30 feet taller to avoid interference unless the trees were to be removed or reduced in height to approximately the 100-foot level or lower.

**Topping the trees would create undesirable visual impacts to nearby residential areas, whereas the proposed location is well screened to nearby residential areas to the North and does not require the removal or trimming of any existing trees. The topped trees would also create a negative visual impact on their own, as over a third of the height would need to be removed to avoid interference.**

*(iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.*

**Response: No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps below.**

*(b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.*

**Response: Application has demonstrated compliance with Section 33.025(1)(a) above, however proposed location also meets this requirement and includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity.**

*(2) The City may grant a variance to the maximum allowable height for a WCF if the applicant demonstrates:*

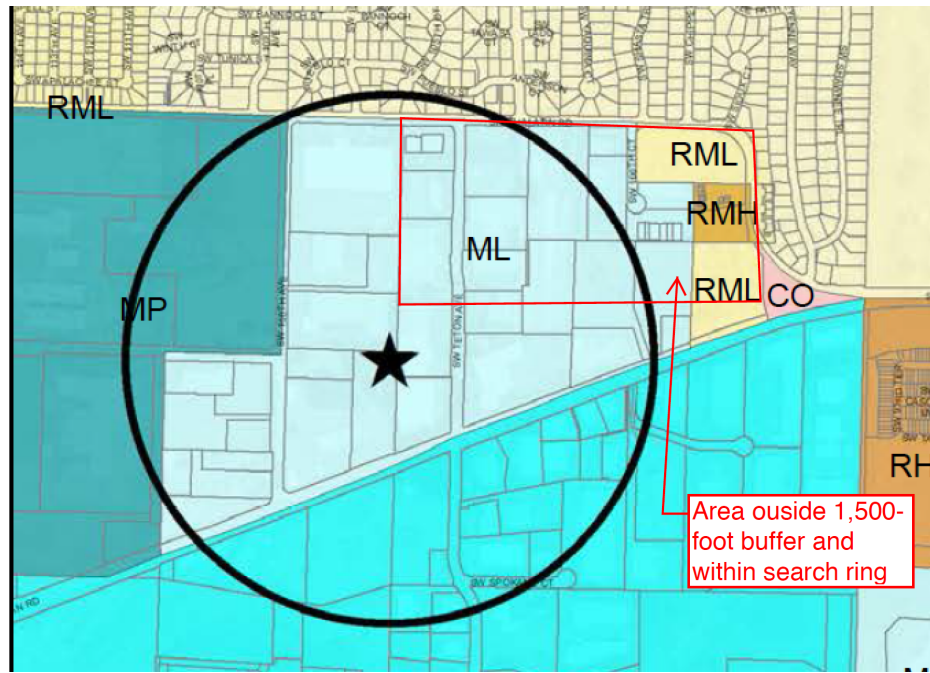
- (a) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide at a height that meets the TDC requirements. The needed capacity or coverage shall be documented with a Radio Frequency report; and,*
- (b) The collocation report, required as part of the Architectural Review submittal, shall document that existing WCFs, or a WCF for which an application has been filed and not denied, cannot be modified to provide the capacity or coverage the tower is intended to provide.*

**Response: Not applicable – Applicant is not requesting a variance to the maximum allowable height for the proposed WCF.**

**VERIZON SEARCH RING**



**EXISTING TOWER 1,500' RADIUS WITH VERIZON SEARCH RING OVERLAP**



**½ MILE RADIUS OF PROPOSED TOWER**



# **RF Usage and Facility Justification**

## **Durham**

**Prepared by Verizon Wireless Walid Nasr**

**Jun 14, 2017**



## **Introduction:**

There are two main drivers that prompt the need for a new cell site. One is coverage and the other is capacity.

**Coverage** is the need to expand wireless service into an area that either has no service or bad service. The request for service often comes from customers or emergency personnel. Expansion of service could mean improving the signal levels in a large apartment complex or new residential community. It could also mean providing new service along a newly built highway.

**Capacity** is the need for more wireless resources. Cell sites have a limited amount of resources to handle voice calls, data connections, and data volume. When these limits are reached, user experience quickly degrades. This could mean customers may no longer be able to make/receive calls nor be able to browse the internet. It could also mean that webpages will be very slow to download.

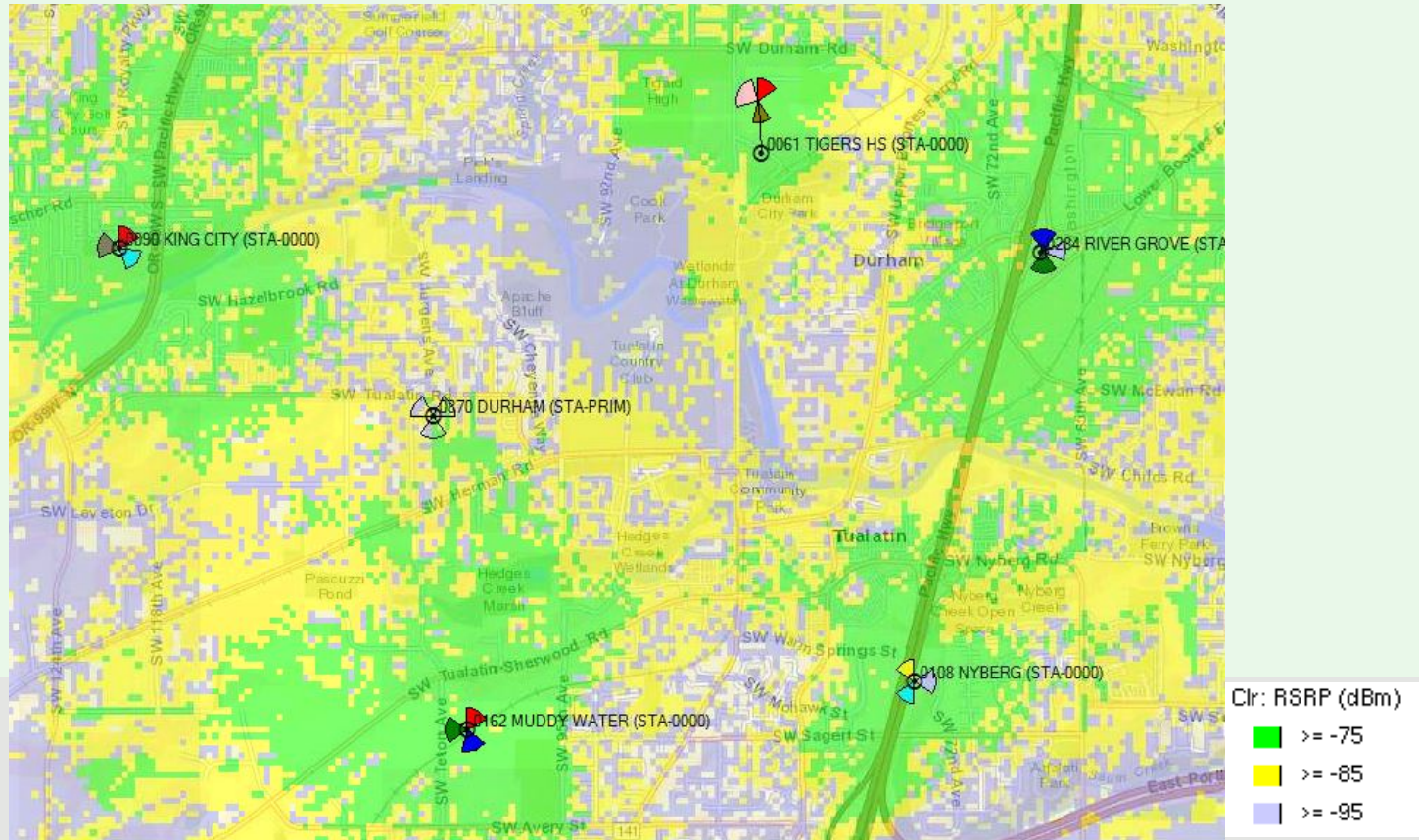
**Capacity** is the amount of resources a cell site has to handle customer demand. We utilize sophisticated programs that use current usage trends to forecast future capacity needs. Since it takes an average of (1-3) years to complete a cell site project, we have to start the acquisition process several years in advance to ensure the new cell site is in place before the existing cell site hits capacity limits.

**Location, Location, Location.** A good capacity cell site needs to be in the center of the user population which ensures even traffic distribution around the cell. A typical cell site is configured in a pie shape, with each slice (aka. sector) holding 33% of the resources. Optimal performance is achieved when traffic is evenly distributed across the 3 sectors.



# Coverage Area of Existing Site

The proposed Durham site is a capacity site. This site will offload the existing sites King City, Muddy Water, TigerHS.

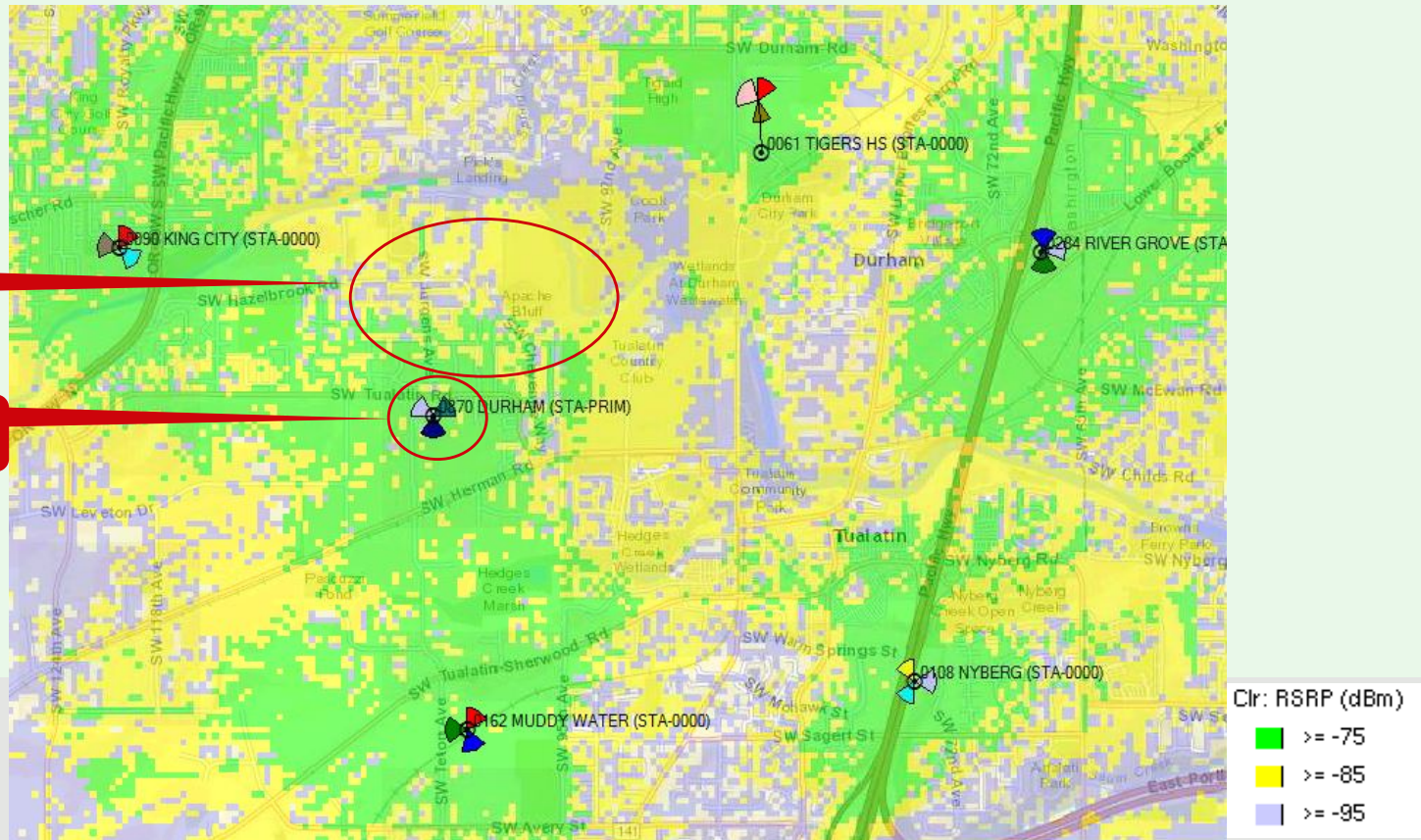


# Coverage Area Offloaded by New Site

The proposed Durham site is a capacity site. This site will offload the existing sites King City, Muddy Water, TigerHS.

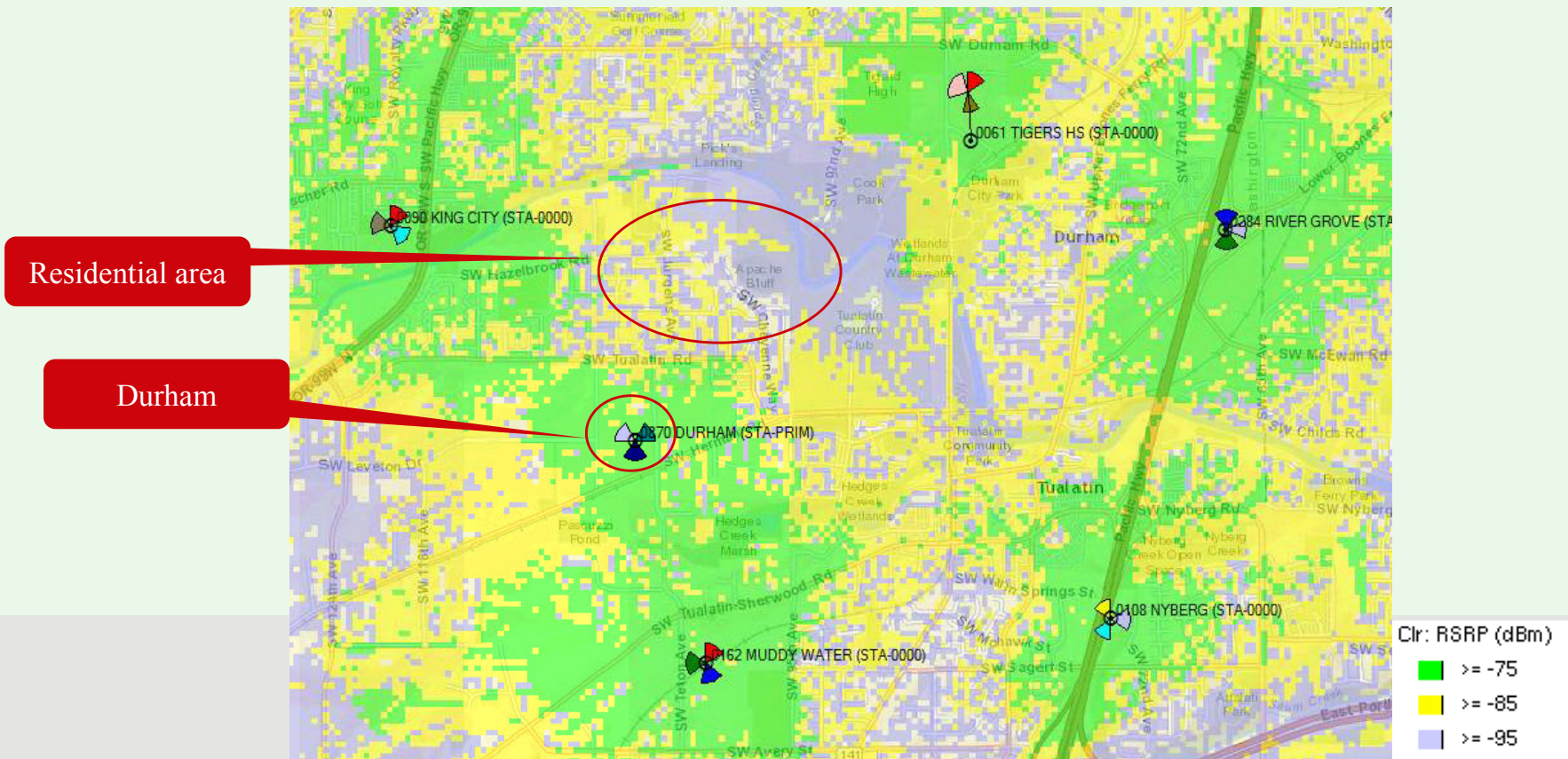
Residential area

Durham



## Coverage Area Offloaded by New Site at New Proposed Location

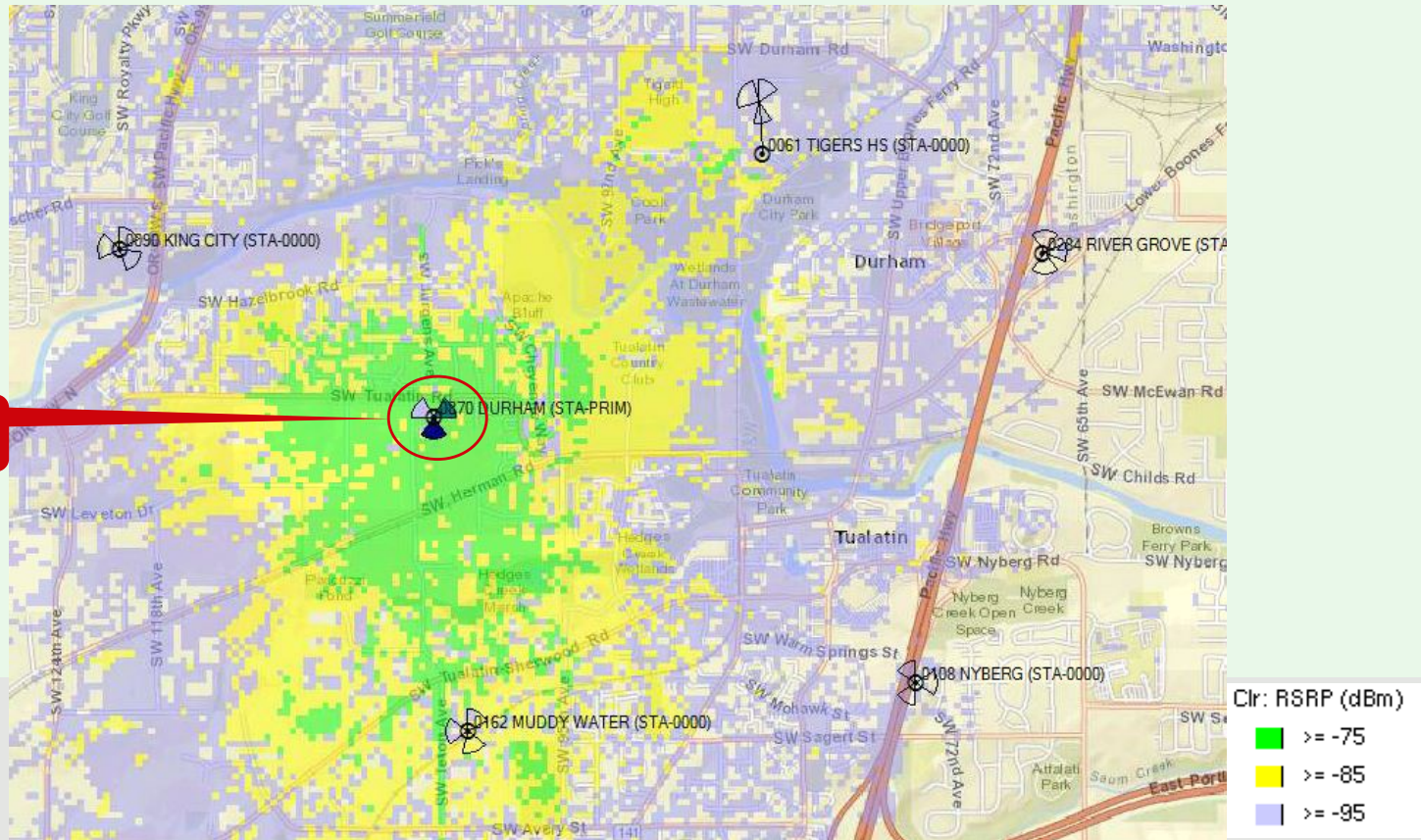
The proposed Durham site is a capacity site. This site will offload the existing sites King City, Muddy Water, TigerHS.



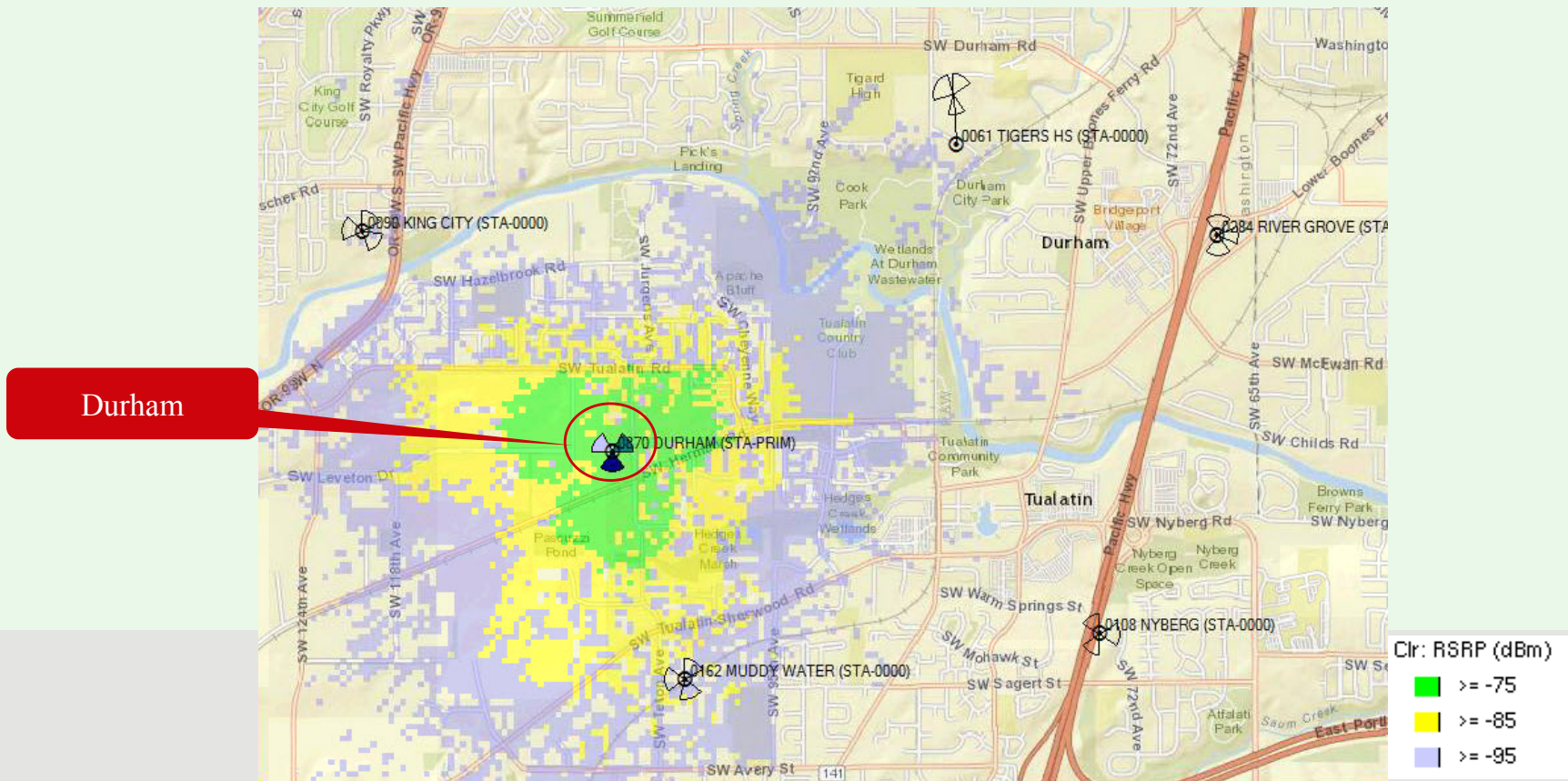
Marginal coverage in residential area due to surrounding trees at existing ATC tower

# Coverage with Durham Site

Durham



# Coverage with Durham Site at New Proposed Location



## Need Case for: Durham

**Summary:** The existing sites King City, Muddy Water, TigerHS cannot carry the data traffic that exists in the area it serves.

**Detail below:**

- Exact data about sites is proprietary and cannot be disclosed due to competitive reasons.
- The existing cell sites King City, Muddy Water, TigerHS are forecasted to reach capacity in the near future.
- The new cell site Durham will provide additional resources to existing sites. It will take some users off of existing sites, which will alleviate the capacity constraint.
- This will improve customer experience (faster webpage downloads and fewer drop calls).
- Without the new site Durham, existing sites in area will reach capacity which will negatively impact customer's ability to make/receive calls and browse the internet.

**Andrew H. Thatcher**  
*Environmental Health Physics*

July 13, 2017

To:

Acom Consulting, Inc.  
5200 SW Meadows Rd  
Suite 150  
Lake Oswego, OR 97035

Acom consulting has requested that I review the existing antenna site at 10699 SW Herman Road, Tualatin OR, and evaluate the interference potential due to the existing tree canopy as shown in Figure 1. In performing this evaluation I'll review the basics of wireless transmission, what cellular technology can compensate for and what results in a deficient site. Included in the review is Verizon's propagation models<sup>1</sup> for both their proposed Durham site and the existing ATC tower.

In a perfect world for wireless transmission, an un-attenuated radio signal would be sent by the antenna and received by the user without any interference. This is rarely the case as buildings, hills and trees all combine to make the signals propagate along multiple pathways. The three primary components of signal propagation paths are reflection, diffraction and scattering. Reflection occurs from large smooth surfaces such as roadways or buildings. Diffraction occurs when a large object is in the direct line of sight path, such as a hill or building. Scattering occurs when the radio waves contact objects similar or smaller than the wavelength of the frequency of interest. For wireless transmission that can be from 700 MHz (~17" wavelength) to 2100 MHz (~6" wavelength). Scattering would be the dominant interaction with trees while all sources of interference serve to attenuate the signal to some degree with each interaction.

So the presence of trees creates scattering which causes signal distortion in addition to signal attenuation. The transmitted signals received by the end user (a person's cell phone) will consist not only of the original (un-attenuated) signal but also several secondary signals traveling on different paths. These multi-path signals, since they are a result of scattering (since we're concerned with the effects of trees), travel a longer signal path and therefore arrive at an end user (cell phone) later than the original un-attenuated signal. These late signal arrivals become interference and can result in distortion of the original signal. This type of distortion is frequency dependent with greater distortion occurring at higher frequencies. Multi-path signals are a common occurrence in our environment but such multi-path signals are due to stationary objects such as homes, rooftops, and even trees at a distance. Such distortions can readily be corrected due to the use of a RAKE<sup>2</sup> receiver in the phone. However, for a tree canopy in a near field environment such as in Figure 1 the obstruction is not constant but in fact continuously

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<sup>1</sup> Propagation modeling provided by W. Nasr, Verizon RF Engineer, 7/5/2017.

<sup>2</sup> Briefly, RAKE receivers are used in the receiver phones of Code Division Multiple Access (CDMA) systems. The receiver collects and treats each time shifted version of the original signal as an independent signal and then combines them into a single signal provided the delay is not too long.

changing. The result is scattered signals that may be stronger than direct signal due to signal attenuation since the tree canopy density is not uniform and the signals going through the tree will be attenuated differently. Further, the motion of the trees with wind presents a continuously changing foliage density that results in selective signal fading with time. For the tree canopy shown in Figure 1, the near field environment could easily result in signal attenuation of 10 dB to as much as 20 dB. Combine this attenuation with the constantly changing signal fading environment and the result in a constantly changing delay (due to wind) that the RAKE receiver would have difficulty separating as noise. Reviewing Figure 1 again and one can see that the antennas are near the tops of the trees so the tree movement would include swaying of the trees in addition to individual branch movements.

Figure 2 is the predicted propagation to the residential location of interest from the existing antenna located within the trees. Figure 3 shows the same residential area with the antenna located in the proposed location. Both figures are provided to support the previous qualitative analysis. The figures show that the Reference Signal Received Power (RSRP) is at least 10 dBm lower for each location. Note that this analysis does not consider the effect of wind.

Trees at a distance from the antennas may present acceptable interference as the overall impact could be managed. For antennas placed well beneath the tree canopy in a near field environment affecting all three radiating sectors, it would be difficult to envision a wireless network that could compensate for these factors, the presence of wind, and remain effective in terms of capacity for the site and successful integration with the surrounding wireless sites. The attenuation and scattering of the signal through the trees would result in a lower transmitted power level that could not be improved by increasing the power as that would only serve to also increase the power of the multipath signals. In short, such a setup in the trees would present a problem regardless of the transmitted power level.

To summarize, the existing ATC tower is not a suitable antenna site without substantial modification based on the information provided in this report.





Figure 1: Photo of existing tower surrounded by a dense tree canopy in a near field environment

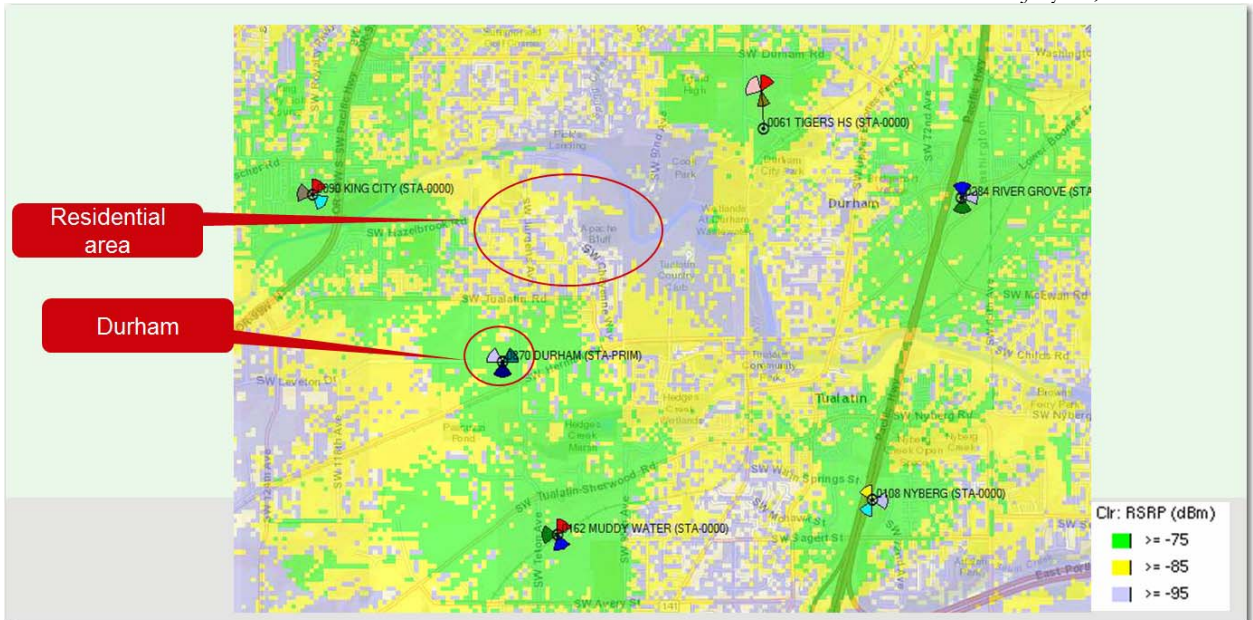


Figure 2: Predicted propagation model showing the residential area of interest from the existing antenna.

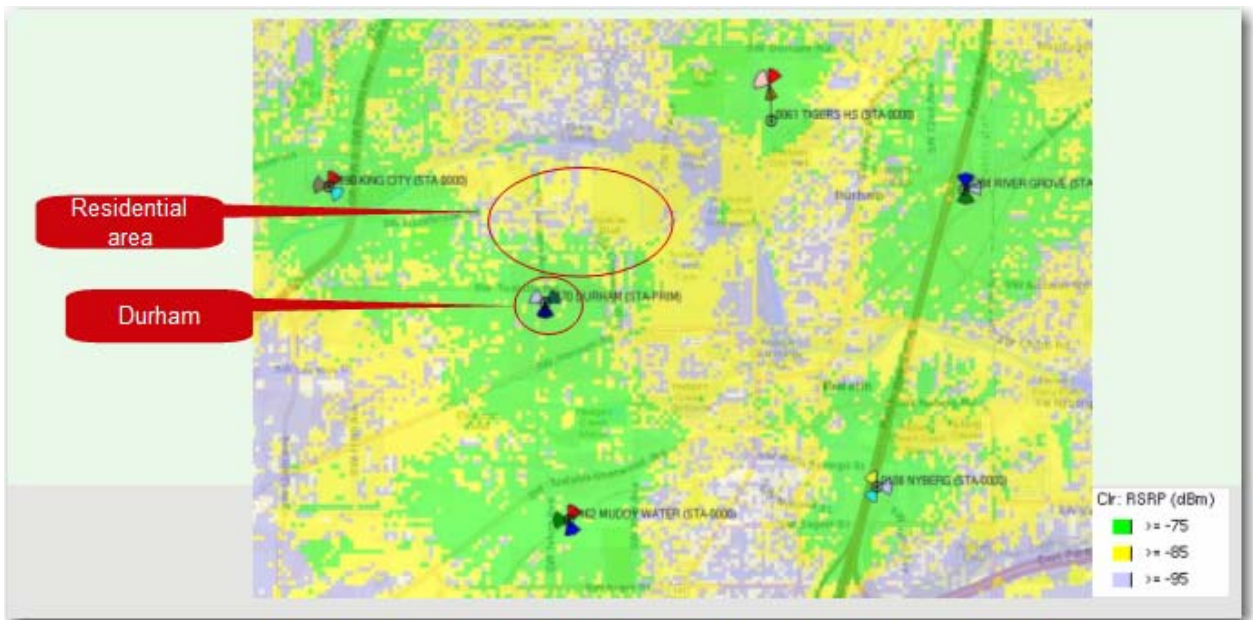


Figure 3: Predicted propagation model showing the RSRP for the residential area of interest with the proposed antenna location.

## Qualifications

I am a member of the IEEE, the Institute of Electrical and Electronics Engineers as well as a member of the Health Physics Society. I am a board certified health physicist with a masters in health physics from the Georgia Institute of Technology. I have over 29 years of experience in the evaluation of both ionizing and non ionizing radiation sources. I am a consultant to the ACGIH Threshold Limit Values for Physical Agents Committee as well as a non ionizing subject matter editor for the Health Physics Journal.

Regards,



Andrew H. Thatcher, MSHP, CHP



September 12, 2017

RE: PI Tower Development Project OR-Tualatin-Durham / 10290 SW Tualatin Road

To Whom It May Concern:

T-Mobile West LLC has been seeking to address a significant gap in network coverage in and around the subject vicinity. After assessing the viability of the existing infrastructure in the area, we have identified the proposed PI Tower Development wireless telecommunications facility to be located at 10290 SW Tualatin Rd in Tualatin, Oregon, as the only candidate that will address and eliminate this network gap in coverage. As a result, once the site is completed, T-Mobile intends to proceed with entering into a lease agreement with PI Tower Development and ultimately install equipment on site.

Best regards,

A handwritten signature in black ink, appearing to read 'Julio Brown'.

Julio Brown  
Sr. RF Engineer  
T-Mobile West LLC  
Portland, Oregon

# POR DURHAM WIRELESS COMMUNICATION FACILITY (WCF)

## VARIANCE APPLICATION (VAR-17-0001)

### ATTACHMENT C: ANALYSIS AND FINDINGS

The issue before the Tualatin Planning Commission (TPC) is consideration of a Variance (VAR) request for Wireless Communication Facility (WCF) separation that would allow the construction of a new 100-foot-tall monopole with antennas mounted at the top and opportunities for ancillary ground equipment within 1,500 feet of an existing WCF located at 10699 SW Herman Road approximately 800 feet southwest of the proposed WCF location. The proposed WCF would be located at 10290 SW Tualatin Road (Tax Map/Lot: 2S1 23B 000800) on a property owned by Tote 'N Stow and operates as a storage facility for recreational vehicles.

In order to grant the proposed variance, the request must meet the approval criteria of Tualatin Development Code (TDC) Section 33.025(1). The applicant prepared a narrative that addresses the criteria, which is included within the application materials (Attachment B), and staff has reviewed this and other application materials and included pertinent excerpts below.

*The following materials and descriptions are based largely on the applicant's narrative; staff has made some minor edits. Staff comments, findings, and conditions of approval are in italic font.*

#### **Section 33.025 – Criteria for Granting a Variance for a Wireless Communication Facility.**

**No variance to the separation or height requirements for wireless communication facilities shall be granted by the Planning Commission unless it can be shown that the following criteria are met. The criteria for granting a variance to the separation or height requirements for wireless communication facilities shall be limited to this section, and shall not include the standard variance criteria of Section 33.020, Conditions for Granting a Variance that is not for a Sign or a Wireless Communication Facility.**

- (1) The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below.**
  - (a) coverage and capacity.**
    - (i) It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility or from the proposed location of a wireless communication facility for which an application has been filed and not denied. The needed capacity or coverage shall be documented with a Radio Frequency report;**

**Applicant Response:** Verizon Wireless, the co-applicant, has done extensive research looking at opportunities in the area to collocate on existing towers or buildings, as that is always a preferred option when available. If an existing tower or structure is not available at the specified height or not attainable because of space constraints or unreliable structural design, then Verizon Wireless will propose a new tower. In this instance, there is one existing tower, the ATC tower, which is located outside of the search area designated as usable by Verizon Wireless' RF department, but within the 1,500-foot radius of the

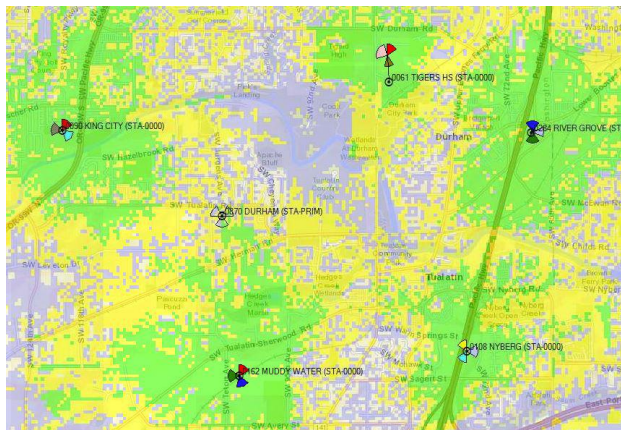
proposed facility. This tower is not viable as a solution to meet their coverage and capacity objectives due to the existing trees that would cause interference. There are no other existing towers available to collocate on within the area of interest thus a new tower is being proposed, which will in turn be available for other providers to collocate on in the future.

In order to meet the Verizon's coverage and capacity objectives, it is necessary to site a tower within the search ring provided by Verizon's RF department as shown below. Moving outside this search ring is technically not practicable and has adverse effects on providing the needed coverage and capacity objectives the tower is intended to provide, which include nearby high-traffic residential areas to the North. Siting outside the search ring can also create interference with other nearby network sites where coverage may overlap.

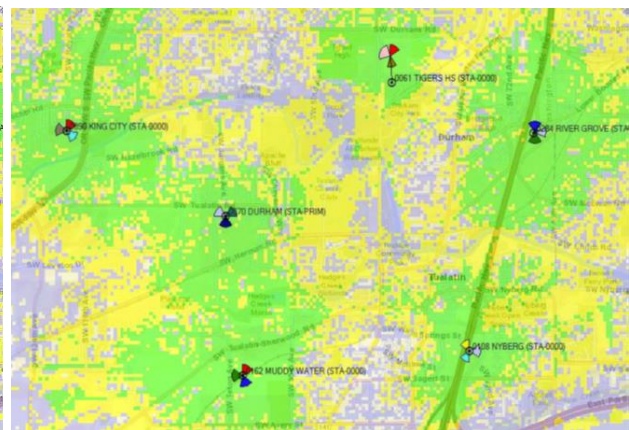
The Applicant is requesting a variance to the 1,500-foot tower separation requirement. There is an existing 146-foot ATC monopole support structure outside of the search ring, approximately 750 feet to the SW of the proposed support tower, located at 10699 SW Herman Road. Per the tower owner, there is currently available space on the tower at the 100-foot level, however this is not high enough to avoid interference from multiple trees surrounding the tower and still meet coverage and capacity objectives to the North, as detailed in the attached RF Usage and Facility Justification Report and RF Engineer Interference Letter.

Locating the tower within the search ring and outside the 1,500-foot radius of the nearby existing ATC tower is also not a desirable alternative as it would mean locating in another part of the ML zone without existing screening or in the RML or RMH zone, where a conditional use permit would be required and where it would be very visible to nearby residential areas. In addition, T-Mobile has also indicated that they intend on co-locating on the proposed WCF, if approved, as the existing ATC tower to the SW will not meet their coverage and capacity requirements either as noted in the attached Letter from T-Mobile RF.

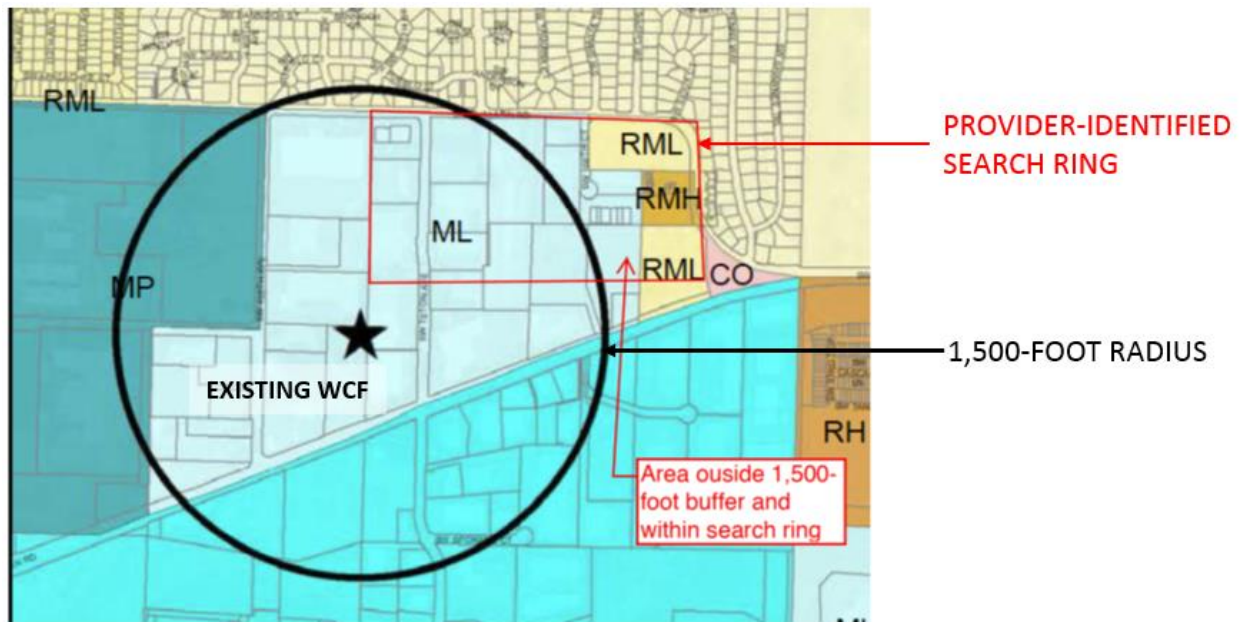
*Staff notes that the search ring is defined by the service provider based on their coverage and capacity objectives. As highlighted in the "RF Usage and Facility Justification" report, the proposed WCF is intended to improve service to the residential areas immediately adjacent to and on both sides of the Tualatin River (see Figures C-1 and C-2). Areas within the search ring but outside of the 1,500-foot radius of the existing WCF at 10699 SW Herman Road are either within or closer to residential planning districts which either prohibit completely or restrict heights of WCFs (see Figure C-3).*



**Figure C-1: Existing Coverage**



**Figure C-2: Proposed Coverage**



**Figure C-3: Search Ring and 1,500-Foot Separate Overlap Map**

Staff finds that this criteria is met.

- (ii) **The collocation report, required as part of the Architectural Review submittal, shall document that the existing WCFs within 1500 feet of the proposed WCF, or a WCF within 1500 feet of the proposed WCF for which application has been filed and not denied, cannot be modified to accommodate another provider; and**

**Applicant Response:** The only existing monopole tower located within 1,500 feet of the proposed location cannot be modified as it is not designed to be extended to the necessary height required to avoid interference from the tall trees currently surrounding the tower. The existing tower would need to be removed and replaced with a new tower at least 20-30 feet taller to avoid interference unless the trees were to be removed or reduced in height to approximately the 100-foot level or lower.

Topping the trees would create undesirable visual impacts to nearby residential areas, whereas the proposed location is well screened to nearby residential areas to the North and does not require the removal or trimming of any existing trees. The topped trees would also create a negative visual impact on their own, as over a third of the height would need to be removed to avoid interference.

*Based on the conditions at 10699 SW Herman Road, modifying the existing WCF to attach functioning antennas would require either an additional height variance for the existing WCF (which already received one to permit its construction in 2000) or a forced height reduction in the trees adjacent to the existing monopole. In the analysis and findings for the variance (VAR-99-02) that allowed the construction of the existing 146-foot-tall WCF, it was noted that one of the reasons for the granting of that variance was to preserve the grove of approximately 50 tall conifers at heights of 100 to 120 feet (the construction of the existing WCF resulted in the removal of 6 trees). VAR-99-02 included the following:*

*“The City as the landowner desires to retain the large conifer trees on the subject portion of the Operations Center property and requires that development such as the proposed communications facility disturb as few conifer trees on the site as possible. The applicant states that wireless RF*

*signals must travel in an unobstructed path from the facility to the user. Because the tower and antennae are proposed to be located in the grove of 100'-120' tall conifers and the City as the property owner does not wish to have the obstructing trees removed, the antennae must be at a height greater than the height of the neighboring trees (with consideration of the future growth of the trees)."*

*As such, barring a reversal in the City's preference to not remove trees on its Operations Center site, the options for locating a new WCF in this area include either further increasing the height of the existing 146-foot-tall WCF (the maximum allowed WCF height in the Light Manufacturing [ML] Planning District is 100 feet) or constructing a new structure. The applicant is making the case that a new 100-foot-tall structure would result in less impacts than extending the height of the existing WCF at 10699 SW Herman Road.*

Staff finds that this criteria is met.

- (iii) There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.**

**Applicant Response:** No available buildings, light or utility poles, or water towers with adequate height to meet coverage objectives are located in the geographical search ring necessary to provide coverage. See Search Ring and ½ mile radius maps.

*Staff notes that—through field visits—the applicant is correct in their assertion that there are no other structures of suitable height to attach antennas that would provide approximate coverage as the proposed WCF, also noting the maximum structure height (outside of flagpoles and WCFs) of 50 feet in the Light Manufacturing (ML) Planning District.*

Staff finds that this criteria is met.

- (b) site characteristics. The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District.**

**Applicant Response:** Application has demonstrated compliance with Section 33.025(1)(a) above, however proposed location also meets this requirement and includes tall, dense evergreens trees that will screen at least 50% of the proposed monopole from adjacent residential areas. The proposed support tower is sited in the least intrusive location possible to cover the gap in coverage and capacity.

*Staff notes that the applicant has chosen to demonstrate compliance with TDC Sections 33.025(1)(a)(i) through (iii) above; therefore, a compliance determination with TDC Section 33.025(1)(b) is not required and the standards in this section do not apply.*

## **SUMMARY OF ANALYSIS AND FINDINGS**

Based on the application materials and the analysis and findings presented above, staff finds that VAR-17-0001 meets all criteria of TDC 32.025(1)(a), "Criteria for Granting a Variance for a Wireless Communication Facility."





**VAR-17-0001  
POR DURHAM  
WIRELESS COMMUNICATION  
FACILITY (WCF)**

**VAR-17-0001  
POR DURHAM WCF**

**TUALATIN PLANNING COMMISSION  
NOVEMBER 16, 2017**



# PURPOSE OF HEARING

- Consideration of a variance to allow a new wireless communication facility (WCF) within 1,500-feet of an existing WCF
- Planning Commission must find that applicant demonstrates compliance with Tualatin Development Code (TDC) 33.025(1)(a) or 33.025(1)(b)



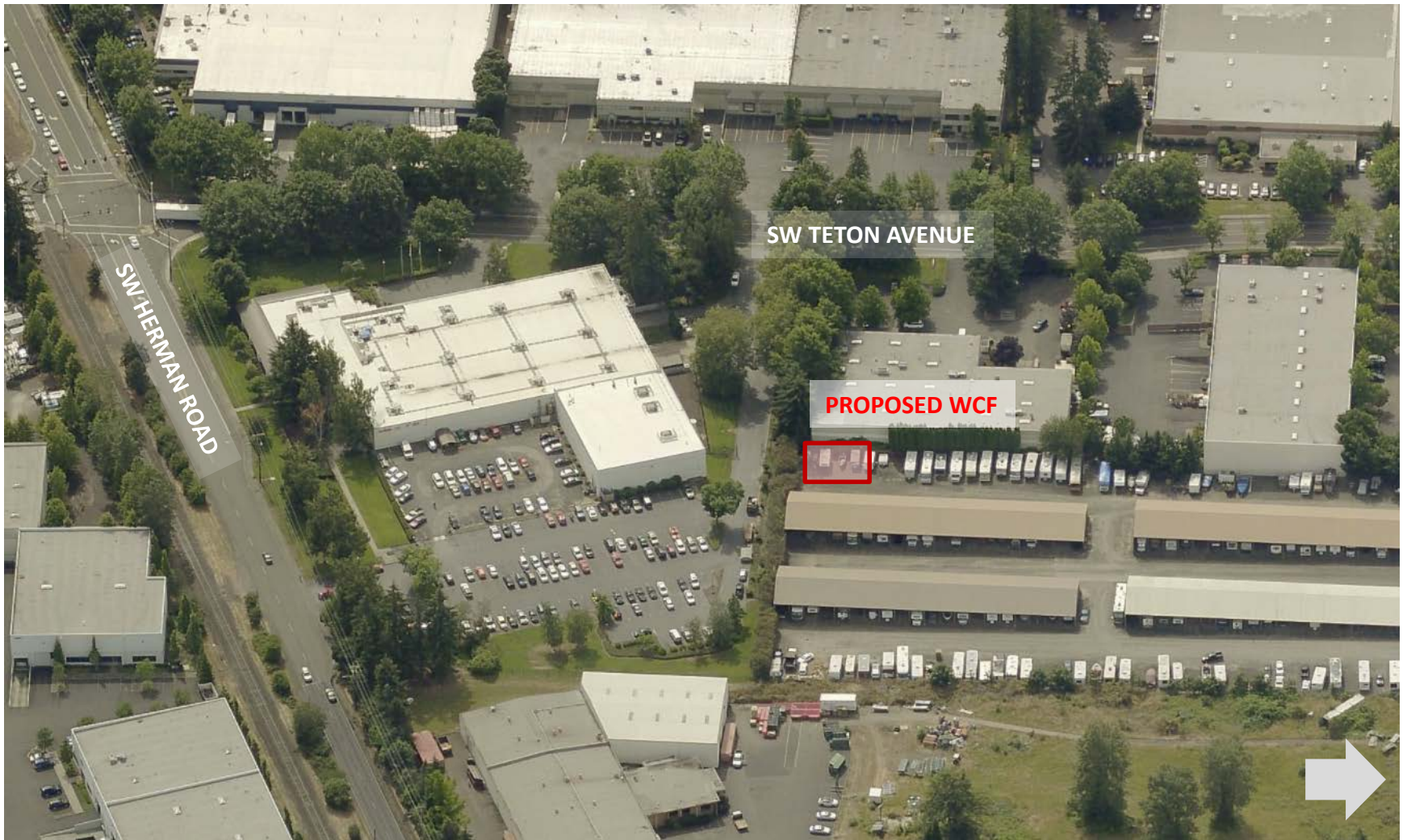
# HEARING AGENDA

- Staff Presentation
- Applicant Presentation
- Public Comment
- Commission Deliberation and Decision



VAR-17-0001  
POR DURHAM WCF

TUALATIN PLANNING COMMISSION  
NOVEMBER 16, 2017  
Attachment D pg 35



**VAR-17-0001**  
**POR DURHAM WCF**

**TUALATIN PLANNING COMMISSION**  
**NOVEMBER 16, 2017**  
Attachment D pg 36



# APPLICANT PROPOSAL

- Applicant proposes to locate a monopole/WCF on the Tote 'N Stow property at 10290 SW Tualatin Road within 1,500 feet of an existing WCF



# VARIANCE APPROVAL CRITERIA

## **TDC 33.025(1)(a)**

The City may grant a variance from the provisions of TDC 73.470(9), which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below:

- (a) Coverage and capacity; or**
- (b) Site characteristics.**



# VARIANCE APPROVAL CRITERIA

## TDC 33.025(1)(a)(i)

**It is technically not practicable to provide the needed capacity or coverage the tower is intended to provide and locate the proposed tower on available sites more than 1,500 feet from an existing wireless communication facility.**

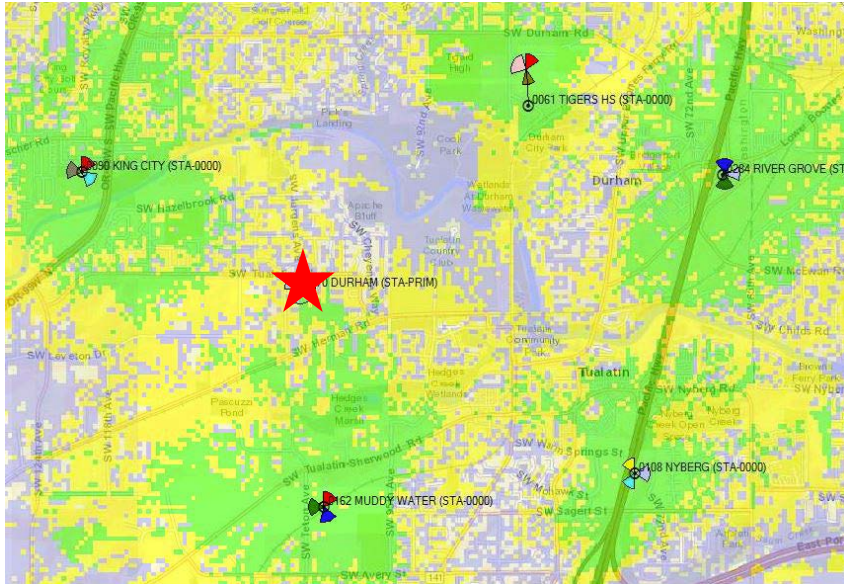
- *Staff finds this criterion is met.*





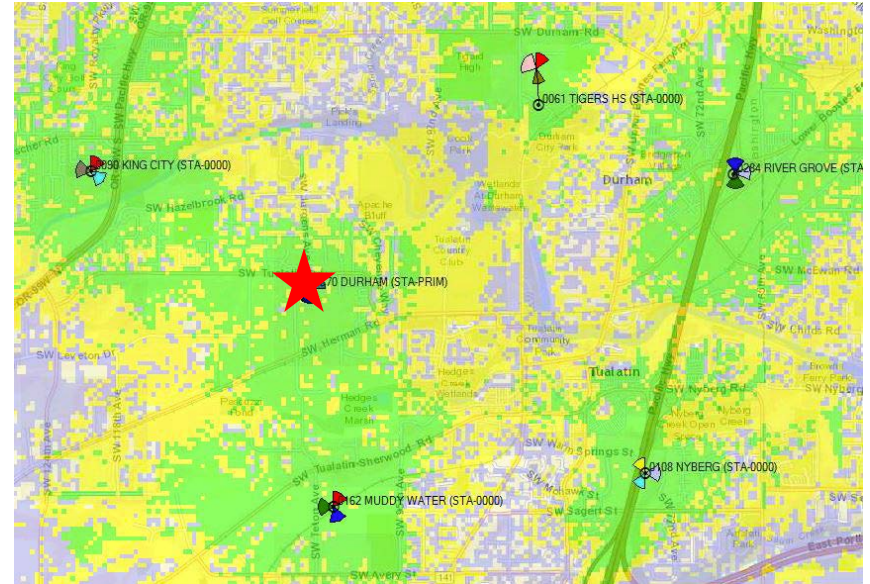
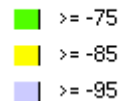
# VARIANCE APPROVAL CRITERIA

**TDC 33.025(1)(a)(i)**



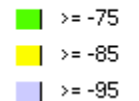
Existing Coverage

Clr: RSRP (dBm)



Proposed Coverage

Clr: RSRP (dBm)



VAR-17-0001  
POR DURHAM WCF

TUALATIN PLANNING COMMISSION  
NOVEMBER 16, 2017

Attachment D pg 40



# VARIANCE APPROVAL CRITERIA

## **TDC 33.025(1)(a)(ii)**

**The collocation report shall document that the existing WCFs within 1,500 feet of the proposed WCF cannot be modified to accommodate another provider.**

- *Staff finds this criterion is met.*



# VARIANCE APPROVAL CRITERIA



**TDC 33.025(1)(a)(ii)**

**Existing 146-foot-tall  
WCF at 10699 SW  
Herman Road**

**VAR-17-0001  
POR DURHAM WCF**

**TUALATIN PLANNING COMMISSION  
NOVEMBER 16, 2017**

*Attachment D pg 42*



# VARIANCE APPROVAL CRITERIA

## TDC 33.025(1)(a)(iii)

There are no available buildings, light or utility poles, or water towers on which antennas may be located and still provide the approximate coverage the tower is intended to provide.

- *Staff finds this criterion is met.*



## NEXT STEPS (IF APPROVED)

- Architectural Review (AR) of the physical elements of the proposed WCF



# PLANNING COMMISSION OPTIONS

1. Approve VAR-17-0001 as drafted;
2. Deny VAR-17-0001 and cite which criteria applicant fails to meet; or
3. Continue discussion to a later date.



**VAR-17-0001  
POR DURHAM WCF**

**TUALATIN PLANNING COMMISSION  
NOVEMBER 16, 2017**

*Attachment D pg 46*

**From:** [Jason Rogers](#)  
**To:** [Charles Benson](#)  
**Subject:** AR17-0010 POR Durham  
**Date:** Thursday, November 02, 2017 1:59:37 PM

---

Charles –

In response to the notice from the City of Tualatin, I wanted to send my comments as a property owner. Myself and another homeowner from my neighborhood plan to attend the meeting that is planned for 11/16/17 at the Juanita Pohl Center. In the event that something may eliminate attendance between now and 11/16/17, I'm sending so these are part of the record and discussion:

In reviewing the original notice dated 4/17/17 I became concerned about not only the facility but also the monopole. My first concern relates to the facility and equipment that has been described. More specifically the concern is for any increased commercial and truck / vehicle traffic at and around a largely residential area with a predominance of children. The second concern relates to the 100' monopole. As mentioned, this is a largely residential and low-rise industrial area so my concern as a property owner is any negative effect on property values with the construction of the tower which could become an eye-sore. Many of the marketing documents on the project have described the location consideration to include the aesthetic component and that the first priority would be a location that can be shielded by existing trees. Considering the aforementioned demographic of the area I find it hard to visualize where, around the Tote-N-Stow property one could "hide" what equates to a 9+ story building. Finally the last document I received outlined this as a Verizon project. I am not nor do I anticipate being a Verizon customer so if this facility or pole have any negative, aesthetic result (as I understand it) I would see no benefit.

Regards,

*Jason Rogers*

**Agency Principal - AOA West Insurance, Inc.**

**(503) 245-1960 ph.**

**(503) 245-2049 fax**

**[www.aoawest.com](http://www.aoawest.com)**





## HATHAWAY LARSON

Koback · Connors · Heth

November 29, 2017

### VIA EMAIL

Planning Commission  
City of Tualatin  
Attn: Aquilla Hurd-Ravich  
18880 SW Martinazzi Avenue  
Tualatin, OR 97062  
[ahurd-ravich@tualatin.gov](mailto:ahurd-ravich@tualatin.gov)

Re: Variance for Wireless Communications Facility - 10290 SW Tualatin Rd.  
Application No. VAR-17-0001  
Applicant's Closing Argument

Dear Commissioners:

As you know, this firm represents the applicant for the above-referenced matter, Lendlease (US) Telecom Holdings, LLC, c/o PI Tower Development, LLC, Verizon Wireless and the property owner (the "Applicant"). Pursuant to ORS 197.763(6)(e), this letter constitutes the Applicant's final written argument. Since our November 22, 2017 letter already addresses many of the legal issues, this final written argument will focus on responding to American Tower Corporation's ("ATC") November 22, 2017 submission.

**A. The ATC Tower is only approved for 130 feet and will require a new variance to extend it to 146 feet or more.**

A critical component of ATC's argument is that ATC's existing tower (the "ATC Tower") has been approved up to 146 feet and it can extend the height of the 130-foot ATC Tower an additional 16 feet without any additional land use approvals. ATC's assertion is directly contrary to the express language in the City Council's variance approval for the ATC Tower (VAR-99-02).

The City Council approved the variance for the ATC Tower pursuant to Resolution No. 3672-50, dated January 24, 2000, and attached findings which clearly limited the height of the tower to 130 feet. *See* Staff Report, dated December 7, 2017, Attachment A, Exhibit A, p.19-20. The title for Resolution No. 3672-50 provides: "A RESOLUTION GRANTING A VARIANCE (VAR-99-02) TO ALLOW A 130' HIGH WIRELESS TELECOMMUNICATION TOWER WITH 16' ANTENNA \* \* \*" Staff Report, Attachment A, Exhibit A, p.19. The Resolution further notes that the City Council was considering "the application of Nextel Communications and the City of Tualatin, for a variance from TDC 60.090(4) to allow a 130' high structure and 16' antenna \* \* \*"

**E. Michael Connors**  
1331 NW Lovejoy Street, Suite 950  
Portland, OR 97209  
[mike@hathawaylarson.com](mailto:mike@hathawaylarson.com)  
(503) 303-3111 direct  
(503) 303-3101 main

Staff Report, Attachment A, Exhibit A, p.19. The City Council findings supporting the Resolution mirror this language, specifically referring to the variance application as a request for “a 130 foot wireless communications monopole tower with up to 16 ft. of antenna \* \* \* .” Staff Report, Attachment A, Exhibit A, p.11.

Based on this express language in the City Council’s Resolution and findings for the variance approval for the ATC Tower (VAR-99-02), there is no question that the approval was limited to a 130-foot tower. That is why the ATC Tower is currently 130 feet, as opposed to a 146-foot tower. Since the City has only approved a variance for a 130-foot tower, ATC will be required to obtain a new variance in order to extend the ATC Tower to 146 feet.

**B. ATC will be required to obtain a new variance in order to remove the screening trees surrounding the ATC Tower.**

As we explained in our November 22 letter, the City Council relied heavily on the screening effect of the surrounding trees to justify the variance when it approved it in 2000. In fact, the City Council specifically relied on these screening trees as one of the primary bases for determining compliance with approval criteria 1, 3 and 4. Staff Report, Attachment A, Exhibit A, p.13-15. For example, the City Council concluded that “[t]all trees such as the subject property will obscure the tower and visually mitigate the tower and antennae for persons viewing it from off site and from the residential areas to the north” and “[t]he location and siting of the proposed Nextel tower will minimize the visual impact of the facility by blending in with the trees and the tower’s surroundings and meets Objectives 1 and 3.” Staff Report, Attachment A, Exhibit A, p.13 & 15.

Since the variance approval specifically relied on these trees for screening and mitigating the visual impacts, ATC cannot remove these trees without obtaining a new variance or modification to the prior variance approval. Doing so would undermine one of the key justifications for the variance approval.

If the City were to conclude otherwise, it would establish a dangerous precedent for the City. Any applicant that proposed a tower on a site with screening trees and relied on those trees to justify the approval would be allowed to subsequently remove those same screening trees without any additional review. The City should not establish a new precedent that essentially allows an applicant to unilaterally change the very same site conditions that the City and neighbors relied on in reviewing and approving the original tower request.

**C. ATC failed to establish that a new variance is feasible.**

As noted above, ATC will be required to obtain a new variance whether it is proposing to increase the height of the tower and/or remove the trees. Since ATC will be required to obtain a new variance approval, at a minimum it was required to demonstrate that it is feasible to obtain such an approval. However, ATC failed to submit any analysis, evidence or information to demonstrate that a new variance is feasible.

In our November 22 submittal, the Applicant demonstrated why it is not feasible for ATC to obtain a new variance for a variety of reasons. ATC will need the City’s consent to even request an increase in the height of the ATC Tower, which it failed to address. It is unlikely that the City will approve a height variance to substantially increase the height of an existing tower that already

significantly exceeds the height limits by 30 feet or 30%, or a proposal to remove virtually all of the screening trees the City relied on in its original approval. Nor can ATC satisfy Tualatin Development Code (“TDC”) 33.025(2) because there is a pending application for a new tower that can accommodate the wireless communications facility without exceeding the 100-foot height limit.

Since ATC failed to address why it believes it is feasible to obtain a new variance and the Applicant demonstrated that it is not feasible, the only conclusion the Commission can reach is that it is not feasible. Absent some evidence or argument that a new variance approval is at least feasible, there is no evidentiary or legal basis for concluding that the ATC Tower can be modified to accommodate the new wireless communication facilities.

**D. ATC failed to establish that a tree removal permit is feasible.**

ATC was also required to demonstrate that it is feasible to obtain a tree removal permit. Similar to the variance issue, ATC failed to submit any analysis, evidence or information to demonstrate that it is feasible to obtain a tree permit to remove the screening trees.

In our November 22 submittal, the Applicant demonstrated why it is not feasible for ATC to obtain a tree removal permit for a variety of reasons. Since some of the screening trees are on the City’s property and others are on the adjacent property to the north/northeast of the ATC Tower, ATC will be required to get the consent of both the City and the adjacent property owner to remove these trees. ATC has not even broached this request with these parties, let alone demonstrated that they will likely agree to it. Nor could ATC satisfy the tree removal permit criteria. In order to justify the removal of the trees, ATC must demonstrate that the trees are diseased, a hazard or must be removed to construct improvements that have already been approved. TDC 34.230(1). Clearly these trees are not diseased or a hazard, and ATC has not applied for, or obtained, any of these approvals.

Since ATC failed to address why it believes it is feasible to obtain a tree removal permit and the Applicant demonstrated that it is not feasible, the only conclusion the Commission can reach is that it is not feasible. Absent some evidence or argument that a tree removal permit is at least feasible, there is no evidentiary or legal basis for concluding that the ATC Tower can be modified to accommodate the new wireless communication facilities.

**E. ATC failed to establish that the City will extend the lease beyond 2020.**

As we noted in our November 22 letter, ATC acknowledged that the current lease for the ATC Tower expires in March 31, 2020 and the City has not agreed to an extension or new lease. Given how much time it will take to obtain the approvals to either increase the height of the ATC Tower or clear the screening trees, do the actual work to increase the height or clear the trees, and obtain approval for the proposed wireless communications facilities, neither Verizon nor T-Mobile will site their wireless communication facilities on this tower for such a short duration. Therefore, the ATC Tower is not a viable option unless and until ATC reaches an actual agreement with the City to extend or renew the lease.

ATC’s November 22 submission makes it clear that the City has not agreed to extend or renew the lease. ATC submitted an unsigned draft of a proposed lease amendment, which it acknowledge is “subject to further changes by the parties.” Letter from Alan Sorem, dated November 22, 2017, p.3.

ATC provided zero information about the status of its discussions with the City or whether the City even supports the concept of an extension or renewal of the lease. In other words, ATC's sole evidence is that ATC drafted a lease amendment. The mere drafting of a lease amendment is not sufficient evidence to demonstrate that it is feasible or likely that the City will extend or renew the lease.

**F. The City code does not require the Applicant to consider an existing tower that would require additional permits or approvals, or at least those that have not yet been filed.**

In our November 22 submittal, the Applicant provided a detailed analysis of the City code explaining why neither TDC 73.470(9), which contains the 1,500-foot separation requirement, nor the variance criteria for tower separation in TDC 33.025(1), require an applicant to consider an existing tower that must obtain additional permits and approvals in order to accommodate the wireless communications facility. Neither the tower separation nor variance criteria require the Applicant to consider existing towers that would require additional permits or approvals to accommodate the wireless communications facility. To the extent the Applicant is required to consider existing towers that would require additional permits or approvals, it is only required to consider those for which the permit application has already been filed. Since ATC had not filed an application for the tree removal permit or variance by the time the Applicant filed this variance application, the ATC Tower cannot be used as a basis for denying the variance application in this case.

ATC, on the other hand, provided no analysis or interpretation of the applicable code sections to support its position. ATC simply assumes that if there is an existing tower within 1,500 feet that can theoretically be modified to accommodate the wireless communication facility, regardless of whether it would require multiple consents and land use approvals, or how likely it would be to obtain those approvals, it automatically precludes a variance for a new tower. As we explained in our November 22 letter, that position is inconsistent with the express language in TDC 73.470(9) and TDC 33.025(1).

There is also a practical problem with ATC's interpretation. Even if ATC could demonstrate that it can theoretically modify the ATC Tower in order to accommodate Verizon and T-Mobile's wireless communication facilities, ATC is not obligated to pursue those approvals and has absolutely no time constraints. ATC can take as much time as it wants to commence the actions necessary to modify the ATC Tower and neither Verizon nor T-Mobile can force the issue. Even if ATC started the process immediately, it will still take a considerable amount of time to negotiate a new lease with the City, obtain the City and adjacent property owner's consent to remove the trees, obtain a new variance approval and tree removal permit, and do the construction work necessary to remove the trees and increase the height of the tower. Meanwhile, Verizon and T-Mobile have existing coverage and capacity gaps that need to be addressed immediately and they will be completely beholden to ATC's schedule. TDC 73.470(9) and TDC 33.025(1) were not intended to give existing tower operators such broad authority to force carriers to wait months or years until the operator can obtain the necessary approvals to modify the existing tower.

**G. The Applicant demonstrated that Verizon cannot achieve its coverage and capacity objectives even if the ATC Tower is increased in height or the screening trees are removed.**

As part of our November 22 submission, the Applicant demonstrated that the ATC Tower cannot be modified in a way that satisfies Verizon's coverage and capacity objectives for this site, in particular the residential area north of SW Tualatin Rd which is the primary area of concern for this new facility. The Applicant submitted a RF Usage and Facility Justification analysis, dated November 20, 2017, prepared by a Verizon RF engineer, which concludes that Verizon's coverage and capacity objectives cannot be satisfied even if the ATC Tower is increased in height or the screening trees are removed.

ATC submitted its own RF analysis, but this evidence is not as reliable. ATC has not spoken with Verizon about the coverage and capacity objectives for this site, does not have access to all of the same network data and other proprietary information as Verizon's RF engineers do and it cannot speak for Verizon. In fact, ATC acknowledged that it cannot explain the distinction between the green and yellow areas on the RF coverage maps or the impacts on Verizon customers in the area because that information is "proprietary". Letter from Alan Sorem, dated November 22, 2017, p.1-2. Verizon's new RF Usage and Facility Justification analysis represents Verizon's position on this matter and it clearly states that the ATC Tower, even if modified, will not work. Verizon's RF analysis is the evidence the Commission must rely upon since it is the most relevant and reliable evidence on this issue.

**H. ATC failed to address the need to accommodate both Verizon and T-Mobile wireless communication facilities.**

ATC claims that the Commission's question about whether or not T-Mobile is interested in siting a wireless communication facility on either the proposed tower or the ATC Tower is "beyond the scope of the criteria," but that is not true. Both Verizon and T-Mobile are interested in siting a wireless communication facility on the Applicant's proposed tower, as evident by the November 21, 2017 email from a T-Mobile representative we included in our November 22 submission. Therefore, the ATC Tower must be able to accommodate both Verizon and T-Mobile to demonstrate that it can be modified to address the wireless needs of the proposed tower.

ATC completely failed to account for the need to modify the ATC tower to accommodate two new carriers. The evidence in the record demonstrates that there is a Sprint antenna at the top of the ATC Tower (antenna tip of approximately 131 feet) and each additional antenna from another carrier will require at least 10-feet of separation. Therefore, a 146-foot tower will not be sufficient to accommodate both carriers since both Verizon and T-Mobile will require at least an additional 10 feet of separation. ATC did not address if it can, and how it would, extend the ATC Tower to 160 feet. Without any evidence that the ATC Tower can accommodate both Verizon and T-Mobile, ATC cannot demonstrate that it can be modified to accommodate these additional carriers.

**I. The Commission should not rely heavily on the new staff report because it does not take into account the parties' November 22 submissions or this final written argument.**

Since the procedures established at the Commission's November 16 hearing required the parties to submit new evidence by the November 22 deadline, with the exception of the Applicant's final written argument which it is entitled to under ORS 197.763(6)(e), the City staff submitted a new staff report on November 22. Although the new staff report is dated December 7, 2017, it was submitted on November 22 and did not take into account the parties November 22 submission or this final written argument.

It is important for the Commission to understand the timing of this new staff report since staff modified its recommendation to a denial. While staff may have changed its recommendation based on the information ATC presented at the November 16 hearing, it did not consider the November 22 submissions or this final written argument. Therefore, the new staff recommendation is not based on any of the evidence and argument presented since the November 16 hearing.

The Commission must base its decision on all of the evidence and arguments in the record, including the Applicant's November 22 submission and this final written argument. Since ATC raised its issues for the first time at the November 16 hearing, and the Applicant was not prepared to address them in detail at that time, the Applicant's post-hearing evidence and arguments are far more thorough and relevant. The Applicant's November 22 submission and final written argument clearly demonstrate that the ATC Tower is not a viable alternative for multiple reasons and therefore compliance with the variance criteria.

**J. The Applicant demonstrated compliance with TDC 33.025(1)(b).**

TDC 33.025(1) provides two alternatives for a variance approval. TDC 33.025(1) provides that "The City may grant a variance from the provisions of TDC 73.470(9) which requires a 1500-foot separation between WCFs, providing the applicant demonstrates compliance with (a) or (b) below." So the variance application must be approved if the Applicant demonstrates compliance with either (a) or (b). Although ATC has focused exclusively on subsection (a), the Applicant also argued that it complies with subsection (b).

TDC 33.025(1)(b) allows for a variance to the separation requirements if: "The proposed monopole location includes tall, dense evergreen trees that will screen at least 50% of the proposed monopole from the RL District or from a small lot subdivision in the RML District." This criteria does not require the Applicant to demonstrate that the ATC Tower is not a viable option. As noted on page 4 of the variance application narrative, the Applicant demonstrated that the proposed site has tall, dense evergreen trees that will screen at least 50% of the proposed monopole from residential districts. ATC does not dispute this claim. Therefore, the application can be approved based on compliance with TDC 33.025(1)(b).

**Conclusion**

As explained in the application material, the November 22 submission and this final written argument, the Applicant demonstrated compliance with the variance criteria and therefore the variance application should be approved. There is no dispute that the ATC Tower cannot accommodate the proposed wireless communications facilities and TDC 73.470(9) and TDC 33.025 do not require the Applicant to delay this project until ATC can determine if it will be able to get the necessary tree removal, variance and property owner approval to modify the ATC Tower. Moreover, the permit requirements and evidence indicate that it is unlikely that ATC will be able to obtain these approvals. And even if ATC was able to increase the height of the ATC Tower or remove the screening trees, it still would not satisfy Verizon's coverage and capacity objectives for this site. For all of these reasons, the Commission should reject ATC's arguments and approve the application.

Very truly yours,

HATHAWAY LARSON LLP



E. Michael Connors

EMC/mo

cc: ACOM Consulting Inc.

Lendlease



HATHAWAY LARSON

Koback · Connors · Heth

December 7, 2017

**VIA HAND DELIVERY**

Planning Commission  
City of Tualatin  
18880 SW Martinazzi Avenue  
Tualatin, OR 97062

Re: Variance for Wireless Communications Facility - 10290 SW Tualatin Rd.  
Application No. VAR-17-0001  
Applicant's Request for Continuance

Dear Commissioners:

As you know, this firm represents the Applicant for the above-referenced matter, Lendlease (US) Telecom Holdings, LLC, c/o PI Tower Development, LLC, Verizon Wireless and the property owner (the "Applicant"). The Applicant is requesting that the Planning Commission continue the December 7, 2017 public hearing to enable the Applicant to provide additional information regarding compliance with TDC 33.025(1)(b).

Based on our communications with City staff, it is our understanding that the hearing can be continued to January 18, 2018. If the Planning Commission grants our request to continue the hearing until January 18, 2018, the Applicant hereby grants an extension of the 120-day deadline under ORS 227.178 and the 150-day FCC Shot Clock deadline to April 13, 2018.

We appreciate the Planning Commission's consideration of our request.

Very truly yours,

HATHAWAY LARSON LLP

E. Michael Connors

EMC/pl

cc: ACOM Consulting Inc.  
Lendlease

**E. Michael Connors**  
1331 NW Lovejoy Street, Suite 950  
Portland, OR 97209  
[mike@hathawaylarson.com](mailto:mike@hathawaylarson.com)  
(503) 303-3111 direct  
(503) 303-3101 main





# STAFF REPORT

## CITY OF TUALATIN

**TO:** Tualatin Planning Commissioners

**FROM:** Aquilla Hurd-Ravich, Planning Manager

**DATE:** 01/18/2018

**SUBJECT:** A Resolution for the Variance Request to the Wireless Communication Facility Separation Requirements

---

**ISSUE BEFORE TPC:**

A resolution of the Planning Commission affirming its decision related to Variance 17-0002 a request to reduce the separation requirements for a Wireless Communication Facility proposed at 10290 SW Tualatin Road within 1,500 feet of an existing wireless communication facility.

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**Attachments:** [Attachment A - Resolution NO. TDC-609-17](#)

RESOLUTION NO. TDC-609-17

A RESOLUTION OF THE PLANNING COMMISSION \_\_\_\_\_  
\_\_\_\_\_ THE VARIANCE APPLICATION FOR A WIRELESS  
COMMUNICATION FACILITY TO LOCATE AT 10290 SW TUALATIN ROAD  
WITHIN 1,500 FEET OF AN EXISTING WIRELESS COMMUNICATION  
FACILITY. (VAR-17-0001).

WHEREAS, on January 18, 2018, a quasi-judicial public hearing was held before the Planning Commission for consideration of a variance upon the application of Acom Consulting, Inc.; and

WHEREAS, notice of public hearing was given as required by the Tualatin Development Code; and

WHEREAS, the Planning Commission heard and considered the testimony and evidence presented on behalf of the applicant, City staff, and those appearing at the public hearing; and

WHEREAS, after the conclusion of the public hearing the Planning Commission deliberated and by this resolution makes its decision;

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF TUALATIN, OREGON, that:

**Section 1.** Variance (VAR-17-0001), considered by the Planning Commission is hereby (check one):

- Approved;
- Approved with Conditions;
- Denied.

**Section 2.** The Planning Commission adopts as its findings the *Analysis and Findings* set forth in Exhibit 1, which includes the list of conditions, if any, and which is attached and incorporated herein.

**Section 3.** This resolution is effective upon adoption.

Adopted by the Planning Commission this \_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF TUALATIN, OREGON

BY \_\_\_\_\_  
CHAIR

APPROVED AS TO FORM

ATTEST:

BY \_\_\_\_\_  
City Attorney

BY \_\_\_\_\_  
Recorder



# STAFF REPORT

## CITY OF TUALATIN

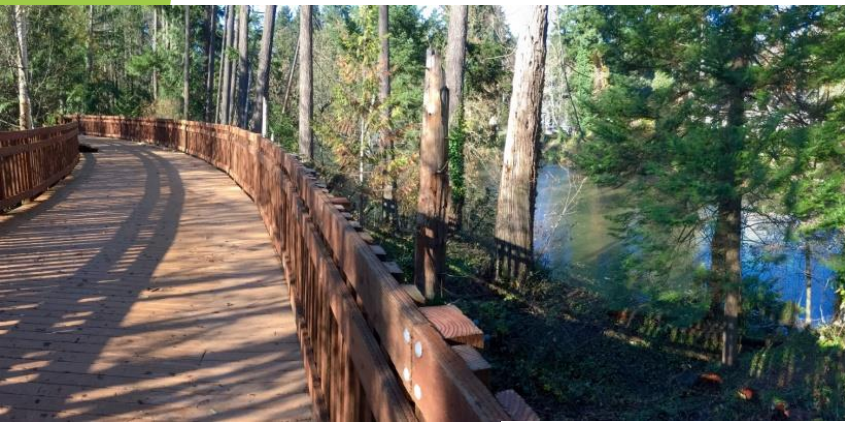
**TO:** Tualatin Planning Commissioners  
**FROM:** Lynette Sanford, Office Coordinator  
**DATE:** 01/18/2018  
**SUBJECT:** Capital Improvement Plan Update

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**ISSUE BEFORE TPC:**

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**Attachments:** [CIP Presentation](#)

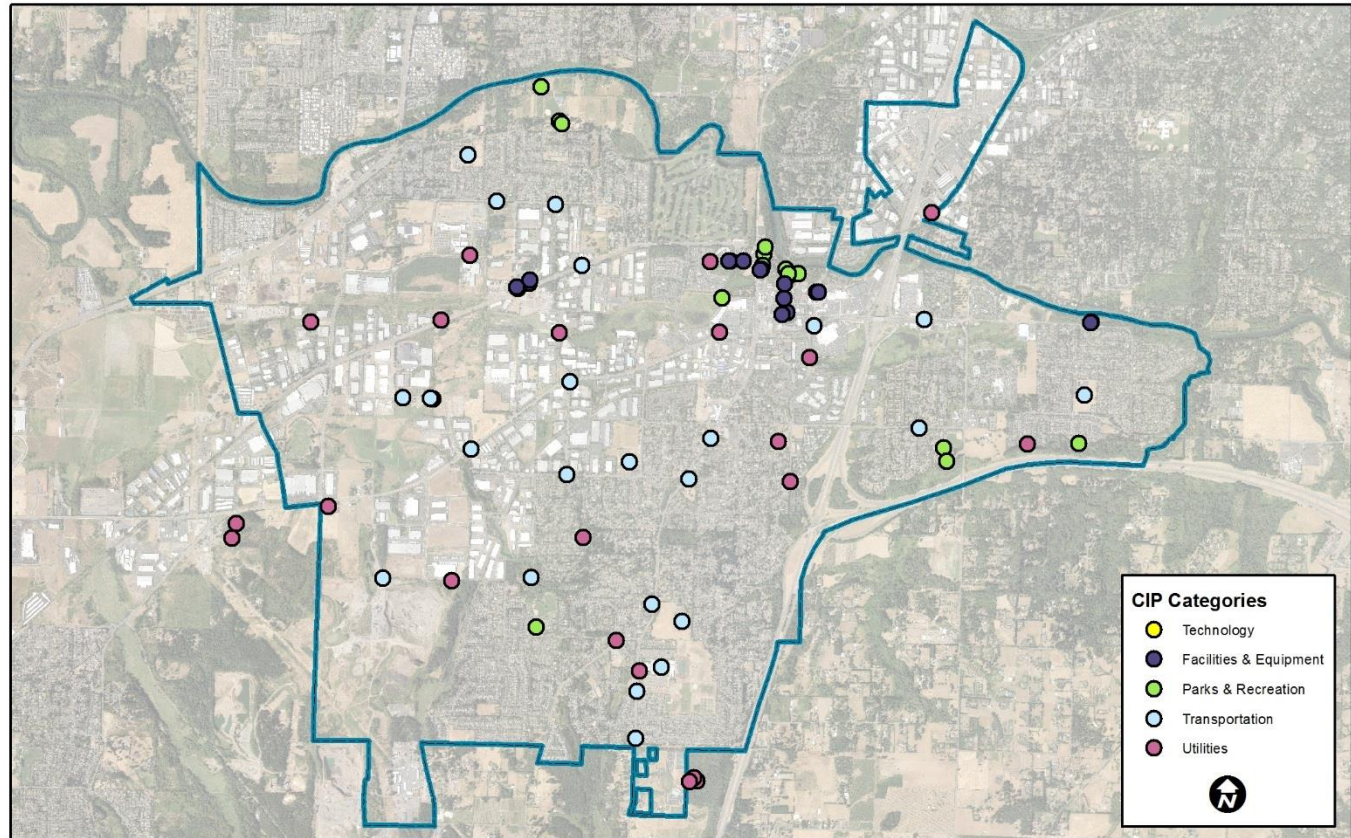


# Capital Improvement Plan 2019-2028

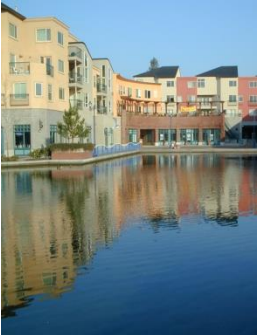


*City of Tualatin*

January 18, 2018



# Project Categories



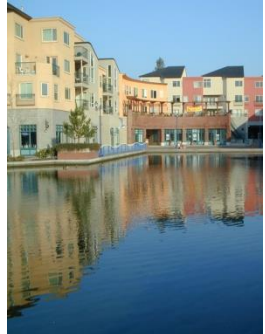
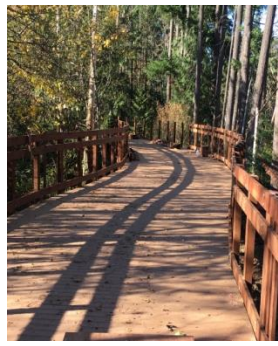
FACILITIES &  
EQUIPMENT

PARKS &  
RECREATION

TECHNOLOGY

TRANSPORTATION

UTILITIES



# Priorities

Council goals

Health and safety

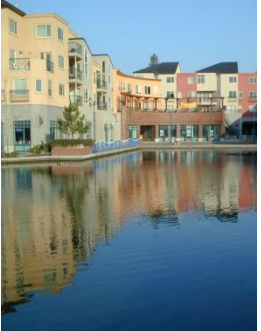
Regulatory requirements

Master Plans

Service delivery needs



# Funding Sources



System Development Charges

Water, Sewer & Storm Rates

Gas Taxes

General Fund

Grants & Donations



# 2018/19 CIP Summary

Facilities & Equip.      \$414,000

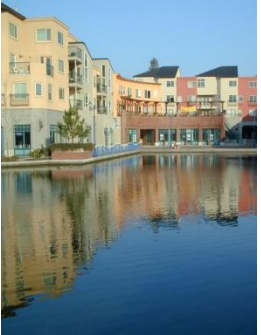
Parks & Rec.              \$252,000

Technology                  \$40,000

Transportation            \$1,733,000

Utilities                      \$2,492,000

**Total                        \$4,931,000**





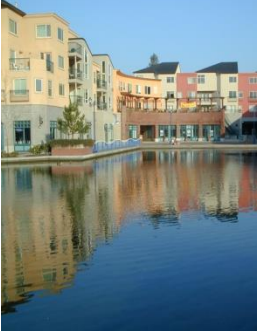


# 2018/19 Facilities Projects



Core Area Parking: ADA Project- Blue Lot 77,000

Library Furnishing Replacement 28,000



Vehicles 309,000

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**FY 18/19 Total 414,000**

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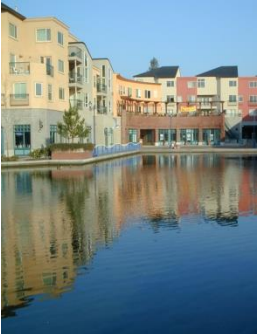


# 2018/19 Parks & Rec Projects



Ibach Park Playground Improvements 98,000

Tualatin Commons Fountain Improvements 140,000



Van Raden Comm Center & CS Admin Building:  
Exterior Paint 14,000

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**FY 18/19 Total 252,000**

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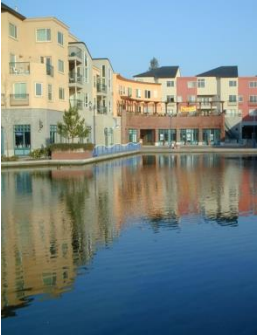


# 2018/19 Technology Projects



Battery Backup Replacement

10,000



Camera System Replacement and Expansion

30,000



**FY 18/19 Total**

**40,000**



# 2018/19 Transportation Projects



Boones Ferry Rd & Arikara Drive:  
Pedestrian Concept Study

10,000

Boones Ferry Rd Sidewalk In-fill (R12)

325,000



Myslony Bridge: West of 112<sup>th</sup> Ave Completion

1,062,000

Sagert St, 72<sup>nd</sup> to Wampanoag: Pedestrian  
Connectivity\*

336,000

**FY 18/19 Total**

**1,733,000**



\*This project relies on outside funding (CDBG) and will only proceed if funding is secured.

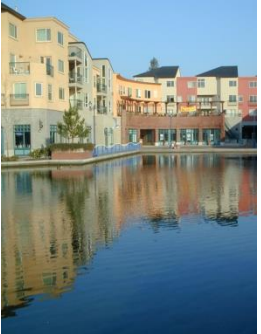


# 2018/19 Utilities Projects- Storm



Herman Rd. Water Quality Facility/LIDA Swale

63,000



Nyberg Creek at Martinazzi Storm Assessment

200,000



Sequoia Ridge Water Quality Facility

103,000

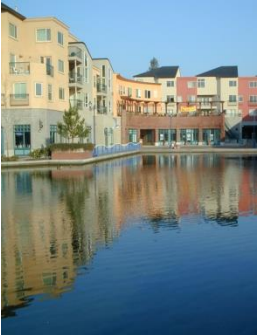
**FY 18/19 Total for Storm**

**366,000**

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# 2018/19 Utilities Projects- Water



ASR Well Rehabilitation

350,000

Blake Street to 115<sup>th</sup> Ave Water Pipe

413,000

Myslony St/112th Ave. Waterline (Completion)

30,000

Water Reservoirs: A1 Painting & Cleaning

697,000

Water Reservoirs: A2 Interior Painting & Cleaning

310,000

Water Reservoirs: C1 Roof Replacement (Completion)

326,000

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**FY 18/19 Total**

**2,126,000**

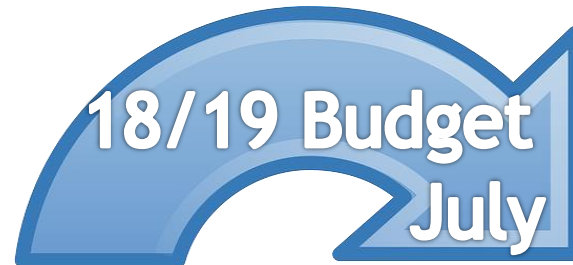
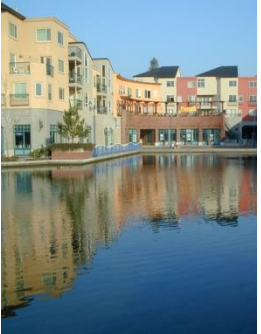
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Transportation	FY 18/19	FY 19/20	FY 20/21	FY 21/22	FY 22/23
*Avery St at Boones Ferry: Add Bike Lanes on East Leg (BP5)				133,000	
*Blake Street: New Road 115th to 124th					1,172,000
Boones Ferry Rd and Arikara Dr: Pedestrian Concept Study	10,000				
Boones Ferry Road Sidewalk In-fill (R12)	325,000				
Garden Corner Curves (105th Ave/Blake St/108th Ave) (R7)			415,000	711,000	2,174,000
Hedges Creek Pedestrian Bridge: Upgrade surface (BP6)				114,000	
*Herman Rd: Widening Tualatin to Teton Rd (R3)		725,000		4,456,000	
*Martinazzi Ave, Warm Springs to Boones Ferry Rd: Concept Study (R14)					59,000
Myslony Bridge: west of 112th Ave (R28)	1,062,000				
*Nyberg St: Improve Bike Lane on East Side of Interchange (BP15)					73,000
*Nyberg Street and I-5 Interchange: Bike Lane Improvements (BP13)				27,000	
*Sagert St, 72nd to Wampanoag: Pedestrian Connectivity	336,000				
School Wayfinding Signs (BP1)				83,000	
Tualatin Rd and Teton Ave: New Traffic Signal (R33)		649,000			
Tualatin Rd: Add Traffic Signs (R38)				23,000	
<b>Transportation Total</b>	<b>1,733,000</b>	<b>1,374,000</b>	<b>415,000</b>	<b>5,547,000</b>	<b>3,478,000</b>

\* These projects rely on outside funding and will only proceed if funding is secured.

# CIP Schedule

July 2017	CIP Kick-Off
Aug-Oct 2017	Utility Coordination
Sep-Oct 2017	General Fund Prioritization
Nov-Dec 16	Internal Draft CIP
Jan 2018	CIP to Committees
Feb 2018	CIP to Council

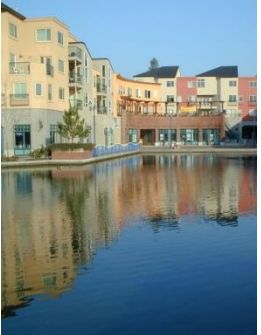






# CIP Update

## Questions?



[www.tualatinoregon.gov/engineering/capital-improvement-plan-cip](http://www.tualatinoregon.gov/engineering/capital-improvement-plan-cip)