



Planning and Development Department

2600 Fresno Street, Third Floor  
Fresno, CA 93721-3604  
(559) 621-8277 FAX (559) 498-1026

Jennifer K. Clark, AICP, Director

September 26, 2019

Please reply to:  
Kao Vang  
(559) 621-8058

Mackenzie & Albritton LLP  
155 Sansome Street, Suite 800  
San Francisco, California 94104

**Re: Verizon Wireless Appeal of the Expiration Date and Certain Conditions of Approval under Conditional Use Permit Application No. P19-00974 for property located at 3199 East McKinley Avenue (the "Project")**

Dear Mr. Albritton:

Approval of the Conditional Use Permit Application No. P19-00974 was given to the applicant in accordance with the Fresno Municipal Code (FMC) on August 16, 2019. On September 3, 2019 an appeal letter was received from the applicant. The items in dispute are listed below with responses from the Planning and Development Department regarding the 7-Year Permit Expiration Date, Conditions of Approval – *Part A. Items to be Completed*, and the General Notes and Requirements that does not pertain to the proposed project.

**Item No. 1**

I. The Expiration Date and Limited 7-Year Permit Term are Unlawful.

The Expiration Dates paragraph of the Approval provides "pursuant to Section 15- 5308 of the FMC an expiration date of seven years from the date of approval has been established for Conditional Use Permits." However, California Government Code Section 65964 provides in relevant part:

As a condition of approval of an application for a permit for construction or reconstruction for a development project for a wireless telecommunications facility, as defined in Section 65850.6, a city or county shall not do any of the following:

... (b) Unreasonably limit the duration of any permit for a wireless telecommunications facility. Limits of less than 10 years are presumed to be unreasonable absent public safety reasons or substantial land use reasons. However, cities and counties may establish a build-out period for a site.

This state law preempts and supersedes the Fresno Municipal Code requirements on permit terms and the limited 7-year permit term must be eliminated under the Approval. The Approval must have a minimum ten-year term to avoid violating state law.

*Response: City staff acknowledges that California state law is controlling and preempts the FMC as it pertains to the expiration of Conditional Use Permits to not less than ten years.*

## **ITEM NO. 2**

### **A. Items to be Completed**

Verizon Wireless objects to several conditions of approval that are clearly inconsistent with the Project. Verizon Wireless project plans clearly show a camouflaged monopine design wireless telecommunications facility that does not front on a major or local street. Accordingly, Verizon Wireless appeals the following conditions of Part A.

1. Radome dimensions: The monopine design does not include a radome and this condition must be deleted.

*Response: Staff has found this condition to not pertain the proposed project and will be redlined from the Conditions of Approval dated on August 16, 2019.*

2. Mast/pole diameter limitations: The monopine design requires structural integrity to support camouflaged foliage and branching that can withstand required wind loads. Accordingly, the mast/pole diameter will exceed 24" and this condition must be deleted.

*Response: Due to the unique design of a monopine cell tower, the mast/pole may exceed 24 in diameter." Please, make sure to clearly dimension the width of the mast/pole in the exhibits, prior to final approval.*

3. Landscaped buffer strip: The project does not front on a major or local street and visibility from any public right-of-way is limited, except for the already camouflaged monopine telecommunication tower. Accordingly, a landscape buffer strip is not required, is not warranted, and this condition must be deleted.

*Response: After careful consideration, staff has found a landscape buffer to not be required for the proposed project and will be redlined from the Conditions of Approval dated on August 16, 2019.*

## **ITEM NO. 3**

### **E. Miscellaneous and General Notes and Requirements**

Verizon Wireless objects to several conditions of approval that are clearly inapplicable to the Project. The Approval includes "Miscellaneous and General Notes and Requirements" (the "Requirements"). Verizon Wireless specifically objects to conditions of approval that have no bearing on the Project, whether they are Requirements or otherwise. Such conditions of approval may take on new meaning over the course of the Project or be interpreted differently by new City officials, creating great uncertainty for the project. Accordingly, Verizon Wireless must insist that all unrelated conditions of approval and requirements be deleted from the Approval. Specifically, Verizon Wireless appeals the following conditions of approval as inapplicable to its Project:

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

## **ITEM NO. 4**

Requirement 13: Landscape maintenance: As noted in our comments to the landscape buffer strip condition above, no such landscaping can be required. Accordingly, maintenance obligations for landscaping are inapplicable and this Requirement should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 5**

Requirement 18: Parking lot trees: Since the Approval does not require any parking lot trees, this Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 6**

Requirements 20 and 21: Accessible parking stalls and signage. The project is an unmanned wireless telecommunications facility and therefore has no accessible parking nor accessible parking signage requirement. These Requirements are irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 7**

Requirement 22 Shared Vehicle and Pedestrian Access: The Project is an unmanned telecommunications facility with limited access and no opportunities for shared pedestrian and vehicle access. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 8**

Requirement 23 Parking, display, and sales lighting: The Project has no parking, display, or sales lighting. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 9**

Requirement 24 Bicycle parking: The Project is an unmanned wireless telecommunications facility with no public access and therefore no bicycle parking. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 10**

Requirement 25 Parking areas: The Project is an unmanned wireless telecommunications facility with no public access and therefore no parking areas. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 11**

Requirement 27 Signage: Certain minimal signage is required on the wireless telecommunications facility under federal law. This requirement must be revised or interpreted to allow any signage required for the Project under state or federal law.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 12**

Requirement 29: Window signage: The Project is an unmanned wireless telecommunications facility with no windows. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 13**

Requirement 30: Banners, streamers, moving signs, and inflatables: The Project is an unmanned wireless telecommunications facility that does not include any banners, streamers, moving signs, or inflatables. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 14**

Requirement 38: Roof mounted equipment: The Project has no roof mounted equipment. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 15**

Requirement 42, 43, and 44 Municipal water and sewer connections: The Project is an unmanned wireless telecommunications facility with no water use or sewer facilities. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 16**

Requirement 48 Open storage units: The Project does not contain any open storage units. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 17**

Requirement 49 Video surveillance: The Project does not contain any video surveillance. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 18**

Requirement 51 Fees: The Project is an unmanned telecommunications facility that will have no impact on signal lights and has no applicable building square footage or residential units applicable to

fire, police, or parks facilities fees. This Requirement is irrelevant and should be deleted from the Approval.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 19**

Requirement 53 Fresno County facility impact fee: This fee remains suspended and inapplicable and should be deleted.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 20**

Requirement 54 Regional transportation mitigation fee: The Project is an unmanned telecommunications facility and will have no impact on transit and this requirement should be deleted.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 21**

Requirement 55 School fees: The Project is an unmanned telecommunications facility and will have no impact on school attendance and this requirement should be deleted.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 22**

Requirement 57 Sewer connection charges: The Project is an unmanned telecommunications facility and will have no sewer connection and this requirement should be deleted.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 23**

Requirement 58 water connection charges: The Project is an unmanned telecommunications facility and will have no water connection and this requirement should be deleted.

*Response: This requirement is not germane to the Project and will be redlined from the list of general requirements.*

**ITEM NO. 24**

Conclusion

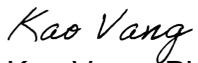
For the foregoing reasons, we request that the Commission grant this appeal and either eliminate or modify the expiration date, and eliminate the conditions we have identified above. As written, the permit term limitation and disputed conditions are overly burdensome and unlawful, and failure to eliminate or modify them as we have requested would violate our client's rights. Thank you for your consideration of this appeal.

This letter confirms that the 7-Year Permit Expiration Date, Conditions of Approval – Part A. Items to be Completed, and the General Notes and Requirements the applicant is appealing has received a response and has been addressed by the Planning and Development Department.

If you agree to the response and conditions listed above, please provide a letter in agreement of the response letter and the withdrawal of your appeal. In by doing so, we will move forward with only the public's appeal scheduled for Planning Commission meeting on Wednesday, October 16, 2019 for the proposed project.

If you have any further questions regarding this letter or conditions, feel free to contact me.

Sincerely,



Kao Vang, Planner  
Development Services Division