Approved by City Manager:

CITY *of* CALABASAS

CITY COUNCIL AGENDA REPORT

DATE: MARCH 31, 2014

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: ANDREW COHEN-CUTLER, ASSOCIATE PLANNER

SUBJECT: ADOPTION OF RESOLUTION NO. 2014-1400, DENYING FILE NO. 140000245, AN APPEAL OF THE COMMUNICATION AND TECHNOLOGY COMMISSION DECISION TO APPROVE FILE NO. 130001344, AND UPHOLDING THE COMMUNICATION AND TECHNOLOGY COMMISSION DECISION TO APPROVE FILE NO. 130001344, A REQUEST FOR A WIRELESS TELECOMMUNICATIONS PERMIT AND A SCENIC CORRIDOR PERMIT TO CONSTRUCT A NEW VERIZON TELECOMMUNICATIONS FACILITY WHICH INCLUDES THE REPLACEMENT OF AN EXISTING 29' TALL STREET LIGHT POLE WITH A NEW 29'-6" TALL STREET LIGHT POLE WITH TWO (2) 51" PANEL ANTENNAS HOUSED INSIDE A 24" DIAMETER BY 66" TALL RADOME ON TOP OF THE POLE. THE REQUEST INCLUDES THE INSTALLATION OF ASSOCIATED BASE STATION EQUIPMENT TO BE HOUSED WITHIN A NEW SUBTERRANEAN VAULT. THE PROJECT IS LOCATED AT 4093 OLD TOPANGA CANYON ROAD WITHIN THE PUBLIC RIGHT-OF-WAY AND OLD TOPANGA SCENIC CORRIDOR.

MEETING DATE: APRIL 9, 2014

SUMMARY RECOMMENDATION:

Adopt resolution No. 2014-1400 denying the appeal to City Council and upholding the Communications and Technology Commission's adoption of Communications and Technology Commission's resolution No. 2013-024, approving file No.130001344.

BACKGROUND:

Project Application:

On October 7, 2013, Cable Engineering Services, representing Verizon Wireless, filed an application for a Wireless Telecommunications Facility Permit and a Scenic Corridor Permit in accordance with section 17.12.050 of the CMC to construct a new wireless telecommunications facility (WTF) including the replacement of an existing 29' tall concrete street light pole with a new 29'-6"-tall concrete street light pole, the installation of 2 panel antennas to be housed inside a 24" diameter X 66" tall antenna housing, associated base station equipment within a subterranean vault, and a new 20" X 17" X 48" Meyers Electrical meter pedestal. The proposed project is located at 4093 Old Topanga Canyon Road within the public right-of-way and Scenic Corridor Overlay. Prior to filing the application, Verizon assigned the project an address of 4095½ Old Topanga Canyon Road; however, the City assigned a different address at the time of submittal. Consequently, there is a discrepancy between the Verizon address and the City-assigned address in some of the documentation. From this point on, the address shall be known as 4093 Old Topanga Canyon Road. The application was deemed incomplete on October 7, 2013, and the applicant was notified. After submittal of all required documents and fees, the application was deemed complete on December 27, 2013

Public Hearings:

This project was originally scheduled for a public hearing to be reviewed by the CTC on December 17, 2013. However, due to the need for the applicant to submit more information, the CTC opened the public hearing and continued the item to January 21, 2014 without public testimony. The CTC conducted a complete public hearing, including taking public testimony, at the January 21, 2014 meeting. At that meeting the following points were brought up by the Commission: 1). the propagation maps were difficult to understand; 2). there was no information about other WTF sites located in the immediate area which might offer colocation opportunities; 3). there were no alternative sites outside of the city presented in the Alternative Site Analysis; 4). CTC requested maps depicting the number of residences within radii of 100', 250', 500' and 1,000'; and, 5). The CTC requested that staff provide exact measurements to adjacent property lines were not available. As a result of the requests for additional and clarifying information, the Commission decided to continue the public hearing to its February 18, 2014 meeting. On February 18, 2014, the public hearing was continued and after taking additional public testimony, the public hearing was closed. The CTC deliberated the facts of the case and voted 4-1 in favor of approval of the project, citing that the facility was appropriately sited and designed.

On February 28, 2014 an appeal of the CTC 4-1 decision approving the project was filed by Wendy Fassberg, President of the Calabasas Country Estates Homeowner's Association. The application requests that the City Council reverse the February 18, 2014 Communications and Technology Commission's adoption of Resolution 2013-024 approving File No. 130001344.
The appellant asserts that the applicant:

> "...failed to meet their burden of showing that the proposed project complies with the Calabasas Telecommunications Ordinance, commencing with section 17.12.050, and following, by all of the arguments made and evidence presented at the Commission hearing, including but not limited to:
>
> 1. The proposed site is contrary to the public health, safety and welfare of the Calabasas residents residing and attending school in the vicinity of the site.
> 2. The site is not 1,000 feet from "schools, dwelling units and parks..." as required by the Ordinance, and the applicant has failed to show:
>   a. That there is a significant gap in coverage;
>   b. That the proposed location is the least intrusive means to close a significant gap; and
>   c. Identify a minimum of five other feasible locations within or without the city, including at least one colocation site".

DISCUSSION/ANALYSIS:

On February 18, 2014 the Communications and Technology Commission considered the attached materials (Attachments-P), written correspondence received, and testimony from14 speakers both for and against the project. Opposition to the project centered on health and safety concerns and a perceived failure by the applicant to provide a complete application. Specifically, that the applicant did not analyze: 1) the existence of a significant gap; 2) that the proposed location was the least intrusive means to close the significant gap in coverage; and 3) that the applicant did not fulfill their obligation to identify five feasible alternate locations.

The appellant's first assertion; that "the proposed site is contrary to the public health, safety, and welfare of the Calabasas residents residing and attending school in the vicinity of the site", is not supportable. The argument here is based upon concerns over radio frequency (RF) emissions. The decision of the Superior Court of California; *Crown Castle USA Inc., et al. v. City of Calabasas, et al.* (January 24, 2014, Super. Ct. Los Angeles County, BS140933), restricts the City of Calabasas' ability to regulate RF emissions to the submittal of a certified report that the

proposed facility complies with FCC requirements, only. Consequently, the health, safety and welfare as related to RF emissions are not topics for consideration by the City. Additionally, the installation of above and below ground equipment, including the light pole, requires that the applicant obtain the necessary building permits and have all work on the wireless telecommunication facility inspected periodically during construction for compliance with the current state building codes. This requirement ensures that the installation is safely and properly constructed; including compliance with the Americans with Disabilities ACT access codes. Additionally, the City's Wireless Telecommunications ordinance also requires that the distance from the WTF pole to a habitable structure shall be more than 150% of the height of the installed pole. This ensures that no WTF pole will pose a danger of falling on any habitable structure. The proposed Wireless Telecommunications Facility meets this requirement. As a matter of record, there are 50 light or utility poles within the public right-of-way with WTF antennas and associated equipment attached in Calabasas. To date, there have been no accidents caused by any of these poles *(Sr. Public Works Inspector)*.

The appellant's second assertion stating that "the site is not 1,000 feet from schools, dwelling units, and parks…" is correct. However the appellant's statement is incomplete and misleading. The omission of the continuation of the quoted CMC Section 17.12.050(C)(4)(a) states: "unless an applicant establishes that a lesser setback is necessary to close a significant gap in the applicant's personal communication service, and the proposed personal wireless telecommunication facility is the least intrusive means to do so. Staff's analysis concludes that the applicant has established a significant gap and has taken all measures to ensure that the proposed installation of a WTF at the proposed location is the least obtrusive means of doing so.

In support of the assertion that the applicant failed to meet their responsibilities, the appellant further states: the applicant failed to show that there is: a) a significant gap in coverage; b) that the proposed location is the least intrusive means to close a significant gap; and, c) [failed to] identify a minimum of five other feasible locations within or without the city, including at least one colocation site.

The following will show that the applicant has illustrated, through the use of propagation study maps, the existence of a significant gap. It will also establish that the applicant has complied with the requirements of CMC Section 17.12.050:

Assertion a: that [the applicant failed] to show a significant gap in coverage, cannot be supported. The applicant provided maps of the same scale that clearly show a gap in LTE coverage along Old Topanga Canyon Road and adjacent neighborhoods *(see Attachment M)*.

The definition of a significant gap and how a significant gap is determined can be found in CMC Section 17.12.050(L):

> "Significant gap" as applied to an applicant's personal communication service or the coverage of its personal wireless telecommunication facilities is intended to be defined in this chapter consistently with the use of that term in the Telecommunications Act of 1996 and case law construing that statute. Provided that neither the Act nor case law construing it requires otherwise, the following guidelines shall be used to identify such a significant gap:
>
> 1. A significant gap may be demonstrated by in-kind call testing.
> 2. The commission shall accept evidence of call testing by the applicant and any other interested person and shall not give greater weight to such evidence based on the identity of the person who provides it but shall consider (i) the number of calls conducted in the call test, (ii) whether the calls were taken on multiple days, at various times, and under differing weather and vehicular traffic conditions, and (iii) whether calls could be successfully initiated, received and maintained in the area within which a significant gap is claimed.
> 3. A significant gap may be measured by:
>
> a. The number of people affected by the asserted gap in service;
>
> b. Whether a wireless communication facility is needed to merely improve weak signals or to fill a complete void in coverage;
>
> c. Whether the asserted gap affects Highway 101, a state highway, or an arterial street which carries significant amounts of traffic.

The applicant has submitted evidence that supports all of the requirements contained in No. 3 in the definition of significant gap. Staff has analyzed the areas depicted on the Verizon existing and proposed coverage maps. The proposed new coverage will close the shown gap in LTE service *(Existing Coverage Map, Attachment M)* by providing coverage from Calabasas High School to the City Border along Old Topanga Canyon Road with some spill-over into the surrounding neighborhoods *(Proposed Coverage Map: Attachment M)*. Using a conservative total of 436 residences *(City GIS-1,500' radius)* and multiplying that by 2.76, *(average household size: Selected Housing Characteristics, 2008-2012 American Community Survey 5-year estimates),* you will find that there is an estimated total of 1,203 residents in the area affected by the new LTE service. Add to that total 10,309 vehicles traveling on Old Topanga in the affected area each day, *(City of Calabasas Traffic Engineer)*, multiplied by 1.2 occupants per vehicle, for a total of 12,371 additional persons potentially affected in the subject area, or a grand total of 13,574 persons potentially affected on a daily basis by the new service; a significant number of persons. The submitted maps *(Attachment M)* clearly show

that there is poor to no LTE coverage in the area of proposed new service. The new WTF will provide excellent to very good LTE service in the proposed coverage area; a marked improvement in LTE service. Finally, the existing gap affects the north segment *(north of Mulholland Highway)* of Old Topanga Canyon Road, an arterial street as defined by the 2030 Calabasas General Plan. As a result of the preceding analysis, the applicant has correctly determined that a significant gap exists.

Assertions b and c: b) that the proposed location is the least intrusive means to close a significant gap; and, c) that the applicant failed to identify a minimum of five other feasible locations within or without the city, including at least one colocation site.

The definition of "least intrusive means" can be found in CMC Section 17.12.050(L):

> "Least intrusive means" means that the location or design of a personal wireless telecommunication facility addresses a significant gap in an applicant's personal communication service while doing the least disservice to the policy objectives of this chapter as stated in Section 17.12.050(A). Analysis of whether a proposal constitutes the least intrusive means shall include consideration of means to close an asserted significant gap by co-locating a new personal wireless telecommunication facility on the site, pole, tower, or other structure of an existing personal wireless telecommunication facility.

To establish that this location is the least intrusive location as well as the location that would best achieve the goals of the proposed WTF, the applicant identified seven (7) feasible alternate sites, including one colocation site and one solitary site outside of the City in the revised Alternative Site Analysis *(Attachment N)*. The proposed site is located over 1,000-feet from the three schools in the area *(two Montessori Schools and Calabasas High School, Attachment K)*. The subject site is over 1,000-feet from any park. However, the proposed wireless telecommunication facility is less than 1,000' from residences.

As stated above, the applicant has demonstrated the existence of a significant gap and locating the facility at the proposed location would successfully close the existing gap. Pursuant to Code requirements, staff analyzed 5 alternate sites submitted by the applicant plus 2 additional sites submitted in response to CTC direction, and placing the proposed facility at either of the two alternate sites, (sites 4 and 5,) located to the south of the proposed facility would result in locating the antennas within 1,000-feet of one or both of the schools located to the south of the proposed facility and less than 1,000 feet from residences. Further

complicating the selection of these two alternates is the presence of high voltage wires directly over the existing light poles. Southern California Edison prohibits any construction directly beneath high voltage lines. Because these sites would be closer than 1,000-feet to schools and the inability to construct the facility directly beneath high voltage lines, these sites were eliminated.

Alternate site No.1 is directly to the north of the proposed site. This alternate would achieve less and is also located under the existing high voltage power lines. Additionally, the proximity of alternate site No. 1 to residences is the same as that proposed site. This site would achieve less coverage. Additionally, the proximity of the alternate site to residences is the same as that of the proposed site. Alternate site No. 2 is further north of the proposed site and alternate site No.1. Consequently, this site would provide less coverage than Alternate site No.1. The site would also be within 100-feet of 6 residences (similar to the subject site which is within 100-feet of 6 residences *(see chart on page7 of the CTC Staff Report, Attachment D)*. Alternate site No.3 is further north of the subject site and alternates 1 and 2. This alternate would accomplish the goals of the proposed site. However, there are only 4 residences within 100-feet of this alternate site; there are 3 more residences within 250-feet. Additionally, a site here would be more visible to the public due to a lack of taller surrounding vegetation. The applicant eliminated the site because of the proximity to more residences and the increased visibility.

Alternate site No. 6, at the corner of Peacock Court and Old Topanga Canyon Road, is a required colocation analysis. In order to legally and safely colocate Verizon's equipment at this AT&T site, the height of the pole would need to be extended up 15-feet, and the pole would have to be made thicker to withstand wind loads. The (existing) alternate WTF is also located 20-feet away from a habitable structure and less than 1,000-feet from the Montessori School. The taller pole would create more of a hazard than the one in existence because it could potentially place more structures in the radius of a falling utility pole. This alternate site would provide little benefit to the coverage to the south due to the surrounding topography and physical orientation of the site; therefore, the site was eliminated from consideration as a desirable alternate. Finally, alternate site No.7 is in Woodland Hills. The site is too far away from the existing site on Mulholland Highway to establish a communication link which is integral to the operation to the Verizon LTE network. Consequently, the site was eliminated from consideration. The City's Wireless Telecommunications Consultant, Johnathan Kramer has reviewed the submitted materials and concurs with these assessments.

The Webster's II, New College Dictionary, 3rd edition, definition of feasible is: *capable of being done or carried out or used.* All 7 alternate sites are capable of being built and being used and therefore, feasible. However, except for alternate site No. 3, all of the other sites would provide diminished communication benefit and network connectivity than the benefits that will be realized by locating the new WTF in the proposed site. Alternate 3, although capable of closing the significant gap, is more visible and is in closer proximity to more residences, and therefore less desireable.

The proposed facility is a stealth facility. The WTF ground equipment will be installed in an underground vault. The two, 3-foot tall vault vents will be painted green to blend into the background. The Meyers Electric Meter Cabinet will also be painted green. The light pole and radome will be colored and textured to match all of the other concrete poles in the area *(for an in depth analysis, see CTC Staff Report, Attachment D).*

The construction of the proposed wireless telecommunication facility in its proposed location will be completed under the supervision of the Calabasas Building and Safety inspectors to ensure the health and safety of the Calabasas residents and students attending schools in the vicinity. The applicant submitted materials supporting the existence of a significant gap in LTE coverage in the area proposed to be covered by the proposed facility. The proposed location and seven alternates, including one colocation site and one site outside of the city, have been thoroughly analyzed and the proposed site is the least intrusive means of closing the existing significant gap. Given the preceding information, the location and design of the new personal wireless telecommunication facility addresses a significant gap in an Verizon's LTE communication service while doing the least disservice to the policy objectives of the chapter as stated in Section 17.12.050(A). The only requirement not met is the 1,000-foot setback from residences which, as discussed, is an acceptable condition because the applicant has convincingly shown the existence of a significant gap, demonstrated that no feasible alternative site exists further away from residences, and took all measures to ensure that the proposed site was the least intrusive means for the wireless telecommunication facility.

ENVIRONMENTAL REVIEW

The City's staff has determined that the project is exempt from environmental review in accordance with Section 21084 of the California Environmental Quality Act (CEQA) and Sections 15301 Class 1 (b,) minor alterations of existing facilities of both investor and publically owned utilities used to provide electric power, natural gas, sewerage, or other public utility services; 15303 Class 3, conversion

of small structures from one use to another where only minor modifications are made; and 15332 Class 32, infill projects, of the CEQA Guidelines.

FISCAL IMPACT/SOURCE OF FUNDING:

The staff and other resources necessary to process the application and appeal can be covered from budgeted funds which derive, in part, from application fees.

REQUESTED ACTION:

Adopt resolution No. 2014-1400 denying the appeal to City Council and uphold the Communications and Technology Commission's adoption of Communications and Technology Commission's resolution No. 2013-024.

ATTACHMENTS:

Attachment A:	City Council Resolution No. 2014-1400
Attachment B:	Appeal Application from Wendy Fassberg, President, Calabasas Country Estates
Attachment C:	Draft Minutes, CTC Meeting-February18, 2014
Attachment D:	CTC Staff Report February 18, 2014
Attachment E:	CTC Resolution 2014-024-Approved
Attachment F:	Plans
Attachment G:	Photo Simulations
Attachment H:	Similar Wireless Facilities in Calabasas
Attachment I:	Alternative Site Analysis-Original Submittal
Attachment J:	Memo from Jonathan Kramer with 1/10/14 addendum
Attachment K:	Map depicting the distance from the proposed facility to schools
Attachment L:	Notice of Exemption
Attachment M:	Revised Propagation Maps
Attachment N:	Revised Alternative Site Analysis
Attachment O:	100', 250', 500', 1,000' Radius Maps
Attachment P:	Map Depicting All Wireless Telecommunications Facilities in Vicinity
Attachment Q:	Public Comment, letters and Speaker cards 1/21/14 and 2/18/14