



# Staff Report to the Western Weber Planning Commission

Weber County Planning Division

## Synopsis

### Application Information

<b>Application Request:</b>	Reconsideration and action on a conditional use permit for a Stealth Verizon Wireless Cell Tower, located on the Uintah Ridge.
<b>Agenda Date:</b>	Tuesday, February 21, 2017
<b>Type of Decision:</b>	Administrative
<b>Applicant:</b>	Verizon Wireless
<b>Authorized Agent:</b>	Nefi Garcia
<b>File Number:</b>	CUP# 2016-18

### Property Information

<b>Approximate Address:</b>	1770 E 6200 S, Ogden
<b>Project Area:</b>	Approx. 2000 sq. ft.
<b>Zoning:</b>	Residential Estates Zones (RE-15)
<b>Existing Land Use:</b>	Residential/Commercial
<b>Proposed Land Use:</b>	Public Utility Substation
<b>Parcel ID:</b>	07-083-0077
<b>Township, Range, Section:</b>	Township 5 North, Range 1 West, Section 22

### Adjacent Land Use

<b>North:</b>	Commercial/Residential	<b>South:</b>	Residential
<b>East:</b>	Commercial/Residential	<b>West:</b>	Commercial/Residential

### Staff Information

<b>Report Presenter:</b>	Felix Lleverino flleverino@co.weber.ut.us 801-399-8767
<b>Report Reviewer:</b>	RK

## Applicable Ordinances

- Title 101, Chapter 1 (General Provisions) Section 7 (Definitions)
- Title 104, Chapter 3 (Residential Estates Zones) (RE-15)
- Title 108, Chapter 1 (Design Review)
- Title 108, Chapter 4 (Conditional Uses)
- Title 108, Chapter 7 (Supplementary and Qualifying Regulations) Section 12 (Towers)
- Title 108, Chapter 7 (Supplementary and Qualifying Regulations) Section 3 (Fencing requirements)
- Title 110, Chapter 1 (Western Weber Signs)

## Summary and Background

Verizon Wireless has submitted a proposal that includes plans to establish a telecommunications tower located on the south-east corner of a lot owned by Washington Heights Baptist church in the Uintah Highlands area of Weber County. The project will occupy approximately 2,000-sq. ft. of the 43.16-acre parcel. The site is located in the RE-15 zone and is permitted as a conditional use as a "Public Utility Substation".

The proposed cell tower has been designed in a way that will be non-obtrusive and the materials and design will be in harmony with the existing church building. It has been designed in a way that will conceal the antennae that are affixed to the top of the tower (see Exhibit B). There will be an on-site diesel generator which will provide back-up power. The generator features a double belly fuel tank which will ensure that fuel will not be exposed to the soil or storm water runoff.

A cell tower in this location will be beneficial to the owner as well as users of the Verizon Wireless cellular network.

There is a trail access to the south of the project area that was created as a continuation of the Bonneville Shoreline Trail. This project will not impede access, and the applicant has expressed that the construction activity will not disturb the natural landscape outside of the project area.

On December 13, 2016 this item was heard by the Planning Commission. The Item was tabled, and the planning staff was given direction to gather information from the Weber-Morgan Health Department on human health effects from radio frequency signals. Despite the fact that Weber-Morgan Health Department does not regulate the cellular industry, they provided some information on a study that was conducted by the Utah State Department of Health. The information regarding the study has been attached to this report as "Exhibit E". The Federal Communications Commission (FCC) is responsible for regulating all cellular towers in the United States.

Conditional use permits should be approved as long as any harmful impact is mitigated. The Uniform Land Use Code of Weber County, Utah (LUC) already specifies certain standards necessary for mitigation of harmful impact to which the proposal must adhere. The proposed application appears to meet these standards. The following is staff's evaluation of the request.

## Analysis

General Plan: As the community grows the need for public utility service demand increases. This cell site will provide better cellular coverage for residents on the Uintah Highlands bench. The project site is adjacent to a commercial area of South Ogden and this use will be in harmony with the surroundings.

Zoning: The subject property is located within the RE-15 Zone which is categorized as a residential estates zone. The purpose and intent of this zone is as follows:

*"The major purpose of the RE-15 and RE-20 Zones is to provide and protect residential development at a low density in a semi-agricultural or rural environment. It is also to provide for certain rural amenities on larger minimum lots, in conjunction with the primary residential nature of the zone."*

Site Development Standards: The following site development standards apply to the RE-15 Zones:

Minimum lot area:

- 15,000 Sq ft, with the specific uses
- 40,000 Sq ft. with specific uses
- 5 acres, with specific uses

Minimum lot width:

- 100 feet

Minimum front yard setback

- 30 feet

Minimum side yard setbacks (Accessory Building)

- 10 feet except 1 foot if located at least 6 feet in the rear of the main building

Minimum rear yard setback

- 30 feet

This proposal meets all of the site development standards stated in §104- 3 (Residential Estates Zone) and §108-10-3 (Public Utility Substation). The drawings show a side setback of 12 feet from the property line to the east of the project area, all other area setbacks are well within standards.

Site Development Standards for a Public Utility Substation: A public utility substation that is located in a residential zone may have reduced rear setbacks to the following:

- Residential zone: five feet.

Conditional Use Review: The proposed cell tower is allowed as a conditional use within the RE-15 zone. The proposed use is termed as a "public utility substation" found in LUC § 104-3-5 (5). A review process has been outlined in LUC §108-4-3 to ensure compliance with the applicable ordinances and to mitigate anticipated detrimental effects. The proposed conditional use, mandate a design review as outlined in LUC §108-4-31(e), (16) to ensure that the general design, layout and appearance of the building remains orderly and harmonious with the surrounding neighborhood. Certain areas of the design review are only applicable due to the nature of the request. As part of this review, the Planning Commission shall consider the applicable matters based on the proposed conditional use and impose conditions to mitigate deficiencies where the plan is found deficient. The matters for consideration are as follows:

- Considerations relating to traffic safety and traffic congestion: Access to the site will be gained from the private parking lot to avoid causing traffic safety and congestion.
- Considerations relating to landscaping: Each corner of the site will feature DeWitt Pro-5 weed cloth under a layer of 3" cobble rock. Three five gallon Julia Jane boxwood evergreen shrubs on each corner of the site will be irrigated by a drip line irrigation system (see page C102).
- Considerations relating to buildings and site layout: The vinyl fence enclosure will feature a 12' double swinging gate that will be used to service the cell site equipment within. A 60'tall three-legged tower will be erected within this enclosure. The antennae and boxes will be concealed behind a panel on all three sides.
- Considerations relating to utility easements, drainage, and other engineering questions: The Engineering division has stated no concerns with the project.
- Considerations associated with any rezoning agreement, planned commercial or manufacturing rezoning, or planned residential unit development approval: There are no concerns with regard to this consideration.
- Safety for persons: This Verizon cellular tower is regulated by the FCC. The FCC has set site and signal strength specifications for all cell towers in the United States. As highlighted in page six of the Federal Communications Commission Fact Sheet. "No State, local government, or instrumentality may regulate the structure, placement and modification based on radio frequency emissions to the extent that such facilities comply with federal regulations" (see Exhibit D).

West Weber Signs: Being that this stealth cell tower can double as a sign, the project shall meet the applicable criteria stated in the Title 110-1 (Western Weber Signs). The applicant has shown that the project meets side setback regulations of three feet.

Fencing requirements: Weber County LUC § 108-7-3 Fencing requirements: "Projects may be encompassed in whole or in part by a perimeter fence of not more than six feet in *height*, subject to design review and provided that access to lots is allowed only from approved interior public or private streets that are part of the approved subdivision or project." The applicant has agreed to comply with this fencing enclosure requirement.

Public Safety and Health: Verizon Wireless is regulated by the Federal Communications Commission (FCC). This cell tower will be in compliance with all FCC regulations. Pertinent information highlighted in the Federal Communications Fact sheet has been included in this report as Exhibit D. The Weber County Attorney has expressed that since this project will adhere to all Federal Regulations, denial by state and local government or instrumentality is not recommended.

Public Notice: A courtesy notice to the public has been sent out to all property owners within a 500 radius of the construction site.

Tax Clearance: There is no outstanding tax history related to this property.

## Staff Recommendation

The Planning Division recommends approval of file# CUP 2016-18, a conditional use permit for a Stealth Design Cell Tower located at 1770 E 6200 S Ogden, UT. This recommendation for approval is subject to all review agency requirements and with the following conditions:

1. The project site is to feature a vinyl fence enclosure that is tan or beige as to blend better with the surroundings.
2. Revised plans shall be submitted prior to the issuance of the conditional use permit showing a maximum fence height of six feet and a tan colored vinyl fence.
3. The applicant shall maintain the site with a good visual appearance and structural integrity.
4. The applicant shall adhere to all federal, State and County ordinances.

This recommendation is based on the following findings:

1. The proposed use conforms to the West Central Weber County.
2. The proposed use will not cause harm to the natural surroundings.
3. The proposed use will not be detrimental to the public health, safety, or welfare by adhering to FCC regulation.
4. The proposed use, if conditions are imposed, will comply with applicable County ordinances.
5. The proposed use will not deteriorate the environment of the general area so as to negatively impact surrounding properties and uses.

## Exhibits

- A. Application
- B. Construction Plans
- C. Site Photo
- D. FCC Fact Sheet
- E. Information from Weber-Morgan Health Department and Utah State Department of Health

## Area Map



Weber County Conditional Use Permit Application			
Application submittals will be accepted by appointment only. (801) 399-8791. 2380 Washington Blvd. Suite 240, Ogden, UT 84401			
Date Submitted / Completed	Fees (Office Use)	Receipt Number (Office Use)	File Number (Office Use)
<b>Property Owner Contact Information</b>			
Name of Property Owner(s) WASHINGTON HEIGHTS BAPTIST CHURCH		Mailing Address of Property Owner(s) 1770 E. 6200 S. SOUTH OGDEN, UT 84405	
Phone 801.479.7030	Fax	Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Email Address sam@barberbrothers.com			
<b>Authorized Representative Contact Information</b>			
Name of Person Authorized to Represent the Property Owner(s) NEFI GARCIA		Mailing Address of Authorized Person 5710 S. GREEN ST. MURRAY, UT 84123	
Phone 702-429-0410	Fax	Preferred Method of Written Correspondence <input checked="" type="checkbox"/> Email <input type="checkbox"/> Fax <input type="checkbox"/> Mail	
Email Address nefi.garcia@taec.net			
<b>Property Information</b>			
Project Name SAL UINAH RIDGE	Total Acreage 43.16	Current Zoning RE-15	
Approximate Address 1770 E. 6200 S. SOUTH OGDEN, UT		Land Serial Number(s) 07-083-0077	
Proposed Use STEALTH CELL SITE FOR VERIZON WIRELESS			
Project Narrative Stealth Verizon Wireless cell site. Disguised as a "tri-leg cross." The antennas will be hidden behind 3 panel screening that has a cross on the three panels. Electronic equipment will be located on grade w/ a back-up diesel generator. All the equipment will be screened by an 8' tall white vinyl fence. There will be some landscaping on the <del>North</del> corners of the compound.			

**Basis for Issuance of Conditional Use Permit**

That the proposed use of the particular location is necessary or desirable to provide a service or facility which will contribute to the general well being of the community:

It will improve the voice & data of the existing VZW customers, And assist in emergency responding situations. A number of public safety divisions are VZW customers.

That such use will not, under the circumstances of the particular case and the conditions imposed, be detrimental to the health, safety and general welfare of persons nor injurious to property or improvements in the community, but will be compatible with and complimentary to the existing surrounding uses, buildings and structures when considering traffic generation, parking, building design and location, landscaping and signs:

As a result of it being a stealth design, it will blend in with the church property.

That the proposed use will comply with the regulations and conditions specified in this Ordinance for such use:

Cell sites are always handled as a G.O.P. + use  
will comply with all ordinary conditions of approval.

That the proposed use conforms to the goals, policies and governing principles and land use of the General Plan for Weber County:

It will add a benefit to the Weber County area.

That the proposed use will not lead to the deterioration of the environment or ecology of the general area, nor will produce conditions or emit pollutants of such a type or of such a quantity so as to detrimentally effect, to any appreciable degree, public and private properties including the operation of existing uses thereon, in the immediate vicinity of the community or area as a whole:

It does not add or take away from the environment or ecology. Does not emit pollutants.

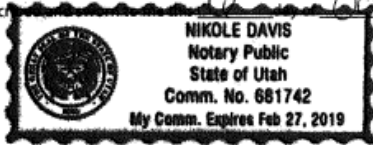
**Property Owner Affidavit**

I (We), Washington Heights Church, Sam J. Barbey propose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge.

Sam J. Barbey  
(Property Owner)

\_\_\_\_\_  
(Property Owner)

Subscribed 1<sup>st</sup> October, 20 16



[Signature]  
(Notary)

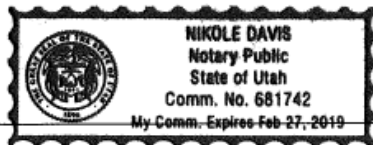
**Authorized Representative Affidavit**

I (We), Washington Heights Church, Sam Barbey the owner(s) of the real property described in the attached application, do authorized as my (our) representative(s), NEEL GARY to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

Sam J. Barbey  
(Property Owner)

\_\_\_\_\_  
(Property Owner)

Dated this 6<sup>th</sup> day of October, 20 16, personally appeared before me SAM BARBEY, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.



[Signature]  
(Notary)





verizon  
wireless

# SAL - UINTAH RIDGE

## SITE INFORMATION

**APPLICANT:**  
VERIZON WIRELESS  
6000 SOUTH PROSPERITY ROAD  
WEST JORDAN, UTAH 84088

**SITE ADDRESS:**  
1770 EAST 6200 SOUTH  
SOUTH OGDEN, UTAH 84403

**LATITUDE AND LONGITUDE:**  
N 41°03'56.45", W 111°55'57.30"

**ZONING JURISDICTION:**  
WEST COUNTY

**PROJECT DESCRIPTION:**  
PROJECT IS A LICENSED COMMERCIAL RADIO STATION. THE PROPOSED ANTENNA AND SUPPORT STRUCTURE WILL BE CONSTRUCTED WITHIN A STATION TOWER WITH OUTDOOR EQUIPMENT AND GENERATOR.

**TYPE OF CONSTRUCTION:**  
OUTDOOR EQUIPMENT AND GENERATOR, STATION TOWER, AND ANTENNAS

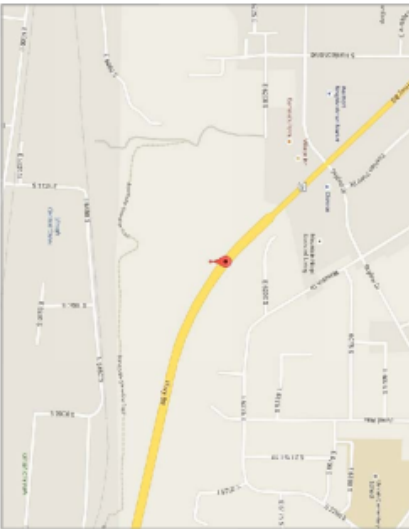
**HAZARDOUS REQUIREMENTS:**  
HAZARDOUS MATERIALS ARE NOT PRESENT FOR HUMAN HEALTH, HAZARDOUS ACCESS REQUIREMENTS DO NOT APPLY.

**POWER COMPANY:**  
KODAK ELECTRIC POWER, 1-888-221-3370

## CONTACT INFORMATION

**SITE ACQUISITION:**  
VERIZON WIRELESS  
6000 SOUTH PROSPERITY ROAD  
WEST JORDAN, UTAH 84088  
SAL LARK CRT, UTM 84423  
CONTACT: JEN LARK  
PHONE: 801-452-1030

## LOCATION MAP



## DO NOT SCALE DRAWINGS

CONTRACTOR SHALL VERIFY ALL PLANS AND EXISTING DIMENSIONS, AND CONDITIONS ON THE JOB SITE AND SHALL PROCEED WITH THE WORK OR BE RESPONSIBLE FOR SAME.

## DRIVING DIRECTIONS

FROM THE CON WEST JORDAN OFFICE, TAKE I-15 NORTH TO HIGHWAY 63 TURNLEFT IN PROSPERITY, CONTINUE NORTH ON PROSPERITY TO HIGHWAY 124, TURN LEFT AND GO WEST FOR 0.20 MILES TO 1500 EAST, THEN TURN LEFT ON 1500 EAST FOR 0.20 MILES TO 6200 SOUTH, TURN LEFT AND GO WEST FOR 0.20 MILES TO THE END OF THE ROAD (FIRST STOP LIGHT), THEN LEFT AND GO WEST FOR 0.20 MILES TO 1770 EAST, THEN TURN LEFT ON 1770 EAST FOR 0.20 MILES TO THE SITE. THE SITE WILL BE LOCATED IN THE SOUTHWEST CORNER OF THE PLOT. ALTERNATE ADDRESS: 83

## APPROVALS

VERIZON WIRELESS REPRESENTATIVE:  
VERIZON WIRELESS RF ENGINEER  
TECH SITE ACQUISITION  
TECH CONSTRUCTION MANAGER  
SITE OWNER:

## DRAWING INDEX

SHEET NO.	TITLE SHEET, VERIFY AND GENERAL SITE INFORMATION	R	REV
1100	TITLE SHEET, VERIFY AND GENERAL SITE INFORMATION	1	09/22/2016
1101	SEE SURVEY	0	
1102	OVERALL SITE PLAN	0	
1103	ENLARGED SITE PLAN	0	
1104	UNSCALING PLAN	1	09/22/2016
1105	SEE ELEVATIONS	1	09/22/2016



**UNDERGROUND SERVICE ALERT, CALL BLUE STAKES OF UTAH @ 811 OR 1-800-462-4111 THREE WORKING DAYS BEFORE YOU DIG**



**verizon wireless**  
VERIZON WIRELESS  
6000 SOUTH PROSPERITY ROAD  
WEST JORDAN, UTAH 84088

**TARC**  
Technology Association of Radio Cellular  
TECHNOLOGY ASSOCIATES

UTAH MARKET OFFICE  
6000 SOUTH PROSPERITY ROAD  
WEST JORDAN, UTAH 84088  
CORPORATE OFFICE  
3115 SOUTH MILLCREEK BLVD, SUITE #110  
OGDEN, UTAH 84403

DRAWN BY: JAY C  
CHECKED BY: NERI D

NO.	DATE	DESCRIPTION
1	09/22/2016	ISSUED UNSCALING
2	07/18/2016	ISSUED DIMENSIONS

SAL - UINTAH RIDGE  
SE SEC 22, T5N, R1W  
1770 EAST 6200 SOUTH  
SOUTH OGDEN, UTAH 84405  
- RAWLAND SITE -

SHEET TITLE  
VERTICAL MAP  
GENERAL INFORMATION  
SHEET NUMBER  
**T100**



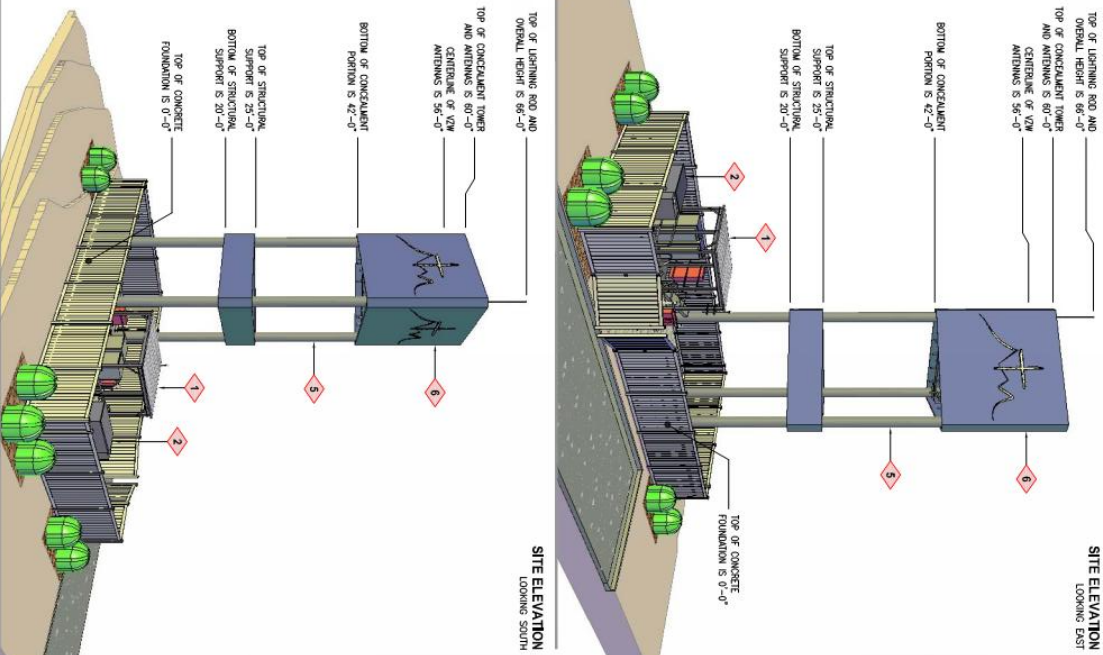
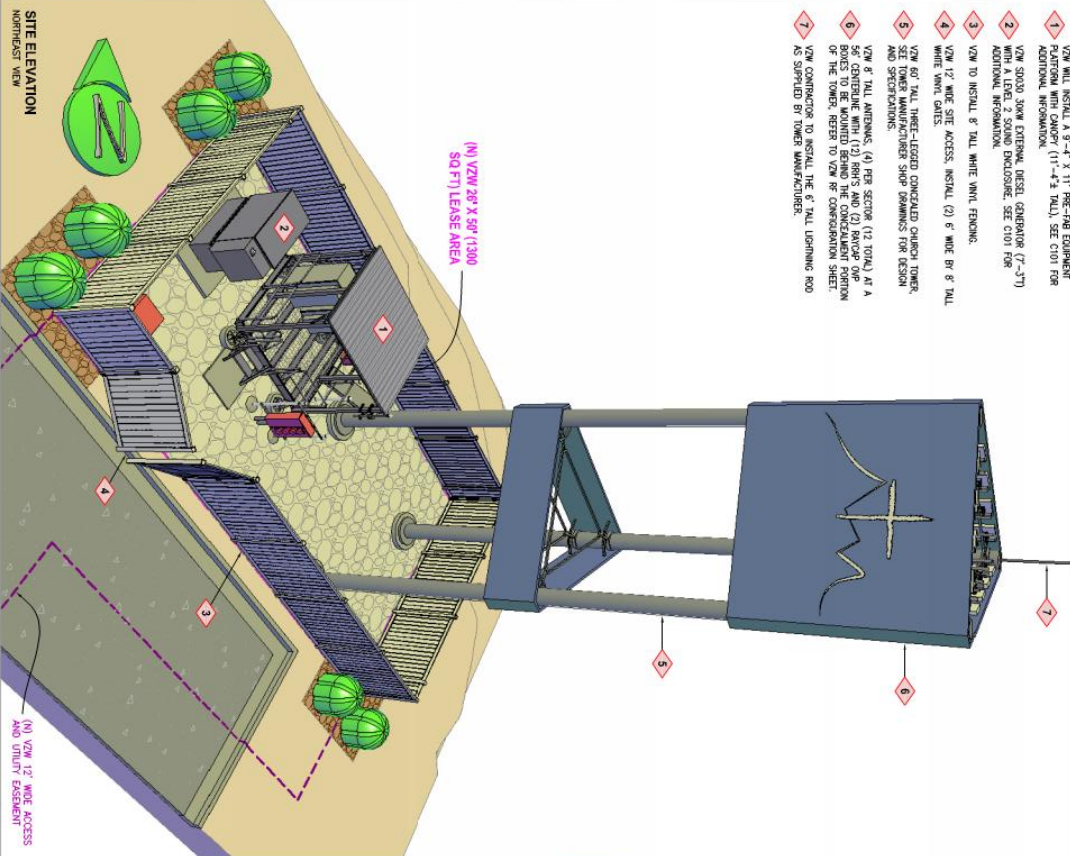






**KEYED NOTES**

- 1 VIEW WILL INSTALL 8'-0" X 4'-0" 1" REE-FAB EQUIPMENT PLATFORM CANOPY (1'-4" X 4" TALL). SEE C1017599 FOR ADDITIONAL INFORMATION.
- 2 VIEW SOUTH TOWER EXTERIOR DESIGN GENERATOR (7'-3" TALL) WITH A LEVEL 2 SOUND ENCLOSURE. SEE C1017599 FOR ADDITIONAL INFORMATION.
- 3 VIEW TO INSTALL 8' TALL WHITE WIND FENCING.
- 4 VIEW 12' WIDE SITE ACCESS. INSTALL (2) 6' WIDE BY 8' TALL WHITE WIND GATES.
- 5 VIEW 60' TALL THREE-LEGGED CONCEALED CHURCH TOWER AND SPECIFICATIONS.
- 6 VIEW 8' TALL ANTIWIND (4) PER SECTION (12 TOTAL) AT A 50' CENTERLINE WITH (12) RAILS AND (2) RAYCAP TOP CAPS. SEE TOWER MANUFACTURER SHOP DRAWINGS FOR DESIGN OF THE TOWER. REFER TO VIEW OF CONSTRUCTION SHEET AS SUPPLIED BY TOWER MANUFACTURER.
- 7 VIEW CONSTRUCTION TO INSTALL THE 8' TALL LIGHTNING ROD AS SUPPLIED BY TOWER MANUFACTURER.



**verizon**  
Wireless  
VERIZON WIRELESS  
9506 SOUTH PROSPERITY ROAD  
WEST JORDAN, UTAH 84088

**Technology Associates**  
UTAH MARKET OFFICE  
5710 SOUTH GREEN STREET  
SALT LAKE CITY, UTAH 84123  
CORPORATE OFFICE  
3115 SOUTH WARDEN DRIVE, SUITE #110  
CARLSBAD, CALIFORNIA 92010

**SITE ELEVATION**  
LOOKING EAST

TOP OF LIGHTNING ROD AND OVERALL HEIGHT IS 66'-0"

TOP OF CONCREMENT TOWER AND ANTIWIND IS 60'-0"

CENTERLINE OF VZM ANTIWIND IS 56'-0"

BOTTOM OF CONCREMENT PORTION IS 42'-0"

TOP OF STRUCTURE SUPPORT IS 25'-0"

BOTTOM OF STRUCTURE SUPPORT IS 20'-0"

TOP OF CONCREMENT TOWER AND ANTIWIND IS 60'-0"

CENTERLINE OF VZM ANTIWIND IS 56'-0"

BOTTOM OF CONCREMENT PORTION IS 42'-0"

TOP OF STRUCTURE SUPPORT IS 25'-0"

BOTTOM OF STRUCTURE SUPPORT IS 20'-0"

TOP OF CONCREMENT FOUNDATION IS 0'-0"

TOP OF CONCREMENT FOUNDATION IS 0'-0"

**SITE ELEVATION**  
LOOKING SOUTH

REV	DATE	DESCRIPTION
1	01/31/2017	REVISIONS PER NC
2	02/06/2016	REVISIONS PER NL
1	09/27/2016	ADOPT UNDISCREPANT
0	07/19/2016	ZONING DRAWINGS

DRAWN BY: JAY C  
CHECKED BY: NERI G

SHEET NUMBER: **C200**

SHEET TITLE: **SITE ELEVATIONS**

SAL - UINTAH RIDGE  
SE SEC 22, T5N, R1W  
1770 EAST 6200 SOUTH  
SOUTH OGDEN, UTAH 84405  
- RAWLAND SITE -





April 23, 1996

FEDERAL COMMUNICATIONS COMMISSION

# FACT SHEET

Information provided by the Wireless Telecommunications Bureau

## NEW NATIONAL WIRELESS TOWER SITING POLICIES

The Telecommunications Act of 1996 contains important provisions concerning the placement of towers and other facilities for use in providing personal wireless services. Most state and local communities have worked closely with cellular and other wireless service providers on such placement plans, but this new law establishes new responsibilities for communities and for the Federal Communications Commission (FCC). The rapid expansion in the wireless industry makes these issues even more important.

This fact sheet is intended to explain the new provisions and to help state and local governments as they deal with the complex issues of facilities siting in their local communities. At the end of this fact sheet, you will find names of contacts for additional information about this area and other issues before the FCC.

Section 704 of the Telecommunications Act of 1996 (the "1996 Act") governs federal, state and local government oversight of siting of "personal wireless service" facilities. The 1996 Act establishes a comprehensive framework for the exercise of jurisdiction by state and local zoning authorities over the construction, modification and placement of facilities such as towers for cellular, personal communications service (PCS), and specialized mobile radio (SMR) transmitters:

- The new law preserves local zoning authority, but clarifies when the exercise of local zoning authority may be preempted by the FCC.
- Section 704 prohibits any action that would discriminate between different providers of personal wireless services, such as cellular, wide-area SMR and broadband PCS. It also prohibits any action that would ban altogether the construction, modification or placement of these kinds of facilities in a particular area.
- The law also specifies procedures which must be followed for acting on a request to place these kinds of facilities, and provides for review in the courts or the FCC of any decision by a zoning authority that is inconsistent with Section 704.



- Finally, Section 704 requires the federal government to take steps to help licensees in spectrum-based services, such as PCS and cellular, get access to preferred sites for their facilities. Federal agencies and departments will work directly with licensees to make federal property available for this purpose, and the FCC is directed to work with the states to find ways for states to accommodate licensees who wish to erect towers on state property, or use state easements and rights-of-way.

The attachments to this fact sheet seek to provide information concerning tower siting for personal wireless communications services. They include a summary of the provisions of Section 704 of the 1996 Act, the actual text of Section 704, and a technical information summary that describes the cellular, wide-area SMR and broadband PCS technologies that underlie the majority of requests for new tower sites.

Questions about the Telecommunications Act of 1996 generally may be addressed to Sheryl Wilkerson in the FCC's Office of Legislative and Intergovernmental Affairs, 202-418-1902 (e-mail: [swilkers@fcc.gov](mailto:swilkers@fcc.gov)). Questions about tower siting, licensing issues or technical matters may be addressed to Steve Markendorff, Deputy Chief, Commercial Wireless Division in the Wireless Telecommunications Bureau, 202-418-0620, (e-mail: [smarkend@fcc.gov](mailto:smarkend@fcc.gov)).

This Fact Sheet is available on our fax-on-demand system. The telephone number for fax-on-demand is 202-418-2830. The Fact Sheet may also be found on the World Wide Web at <http://www.fcc.gov/wtb/wirehome.html>.

## SUMMARY OF SECTION 704 OF THE TELECOMMUNICATIONS ACT OF 1996

The following is a summary of key provisions. The text of Section 704 is reproduced in its entirety as an attachment to this summary.

### 1. Local Zoning Authority Preserved

Section 704(a) of the 1996 Act amends Section 332(c) of the Communications Act ("Mobile Services") by adding a new paragraph (7). It preserves the authority of state and local governments over decisions regarding the placement, construction, and modification of personal wireless service facilities, except as provided in the new paragraph (7).

### 2. Exceptions

#### a. States and Localities May Not Take Discriminatory or Prohibiting Actions

Section 704(a) of the 1996 Act states that the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof shall not unreasonably discriminate among providers of functionally equivalent services and shall not prohibit or have the effect of prohibiting the provision of personal wireless services. 47 U.S.C. §332(c)(7)(B)(i).

Review: Any person that is adversely affected by a state or local government's action or failure to act that is inconsistent with Section 332(c)(7) may seek expedited review in the courts. 47 U.S.C. §332(c)(7)(B)(v).

#### b. Procedures for Ruling on Requests to Place, Construct or Modify Personal Wireless Service Facilities

Section 704(a) also requires a State or local government to act upon a request for authorization to place, construct, or modify personal wireless service facilities within a reasonable time. Any decision to deny a request must be made in writing and be supported by substantial evidence contained in a written record. 47 U.S.C. §332(c)(7)(B)(ii), (iii).

#### c. Regulations Based On Environmental Effects of RF Emissions Preempted

Section 704(a) of the 1996 Act expressly preempts state and local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions. 47 U.S.C. §332(c)(7)(B)(iv).

Review: Parties may seek relief from the FCC if they are adversely affected by a state or local government's final action or failure to act that is inconsistent with this provision. 47 U.S.C. § 332(c)(7)(B)(v).

### 3. Federal Guidelines Concerning RF Emissions

Section 704(b) requires the FCC to prescribe and make effective new rules regarding the environmental effects of radio frequency emissions, which are under consideration in ET Docket 93-62, within 180 days of enactment of the 1996 Act.

*NOTE: The pendency of this proceeding before the FCC does not affect the rules which currently are in effect governing the environmental effects of radio frequency emissions. Section 704(b) gives preemptive effect to these existing rules. See related attachments to the Fact Sheet.*

4. Use of Federal or State Government Property

a. Federal Property

Section 704(c) of the 1996 Act requires the President (or his designee) to prescribe procedures by which the federal government may make available on a fair, reasonable and nondiscriminatory basis, property, rights-of-way and easements under their control, for the placement of new spectrum-based telecommunications services.

b. State Property

With respect to facilities siting on state property, Section 704(c) of the 1996 Act requires the FCC to provide technical support to States to encourage them to make property, rights-of-way and easements under their jurisdiction available for the placement of new spectrum-based telecommunications services.

*NOTE: Information concerning technical support for tower siting which the FCC is making available to state and local governments is attached to the Fact Sheet.*

5. Definitions

"Personal wireless services" include commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. 47 U.S.C. §332(c)(7)(C)(i).

"Commercial mobile services" are defined in Section 332 of the Communications Act and the FCC's rules, and include cellular telephone services regulated under Part 22 of the FCC's rules, SMR services regulated under Part 90 of the FCC's rules, and PCS regulated under Part 24 of the FCC's rules. 47 C.F.R. §20.9.

"Unlicensed wireless services" are defined as the offering of telecommunications services using duly authorized devices which do not require individual licenses; direct-to-home satellite services are excluded from this definition. 47 U.S.C. §332(c)(7)(C)(iii).

**COMPLETE TEXT OF SEC. 704 OF THE TELECOMMUNICATIONS ACT OF 1996**

**SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.**

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY- Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

**(7) PRESERVATION OF LOCAL ZONING AUTHORITY-**

**(A) GENERAL AUTHORITY-** Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

**(B) LIMITATIONS-**

**(i)** The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

**(I)** shall not unreasonably discriminate among providers of functionally equivalent services; and

**(II)** shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

**(ii)** A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

**(iii)** Any decision by a State or local government or place,

construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

**(iv)** No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

**(v)** Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any

court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) DEFINITIONS- For purposes of this paragraph--

(i) the term 'personal wireless services' means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(ii) the term 'personal wireless service facilities' means facilities for the provision of personal wireless services; and

(iii) the term 'unlicensed wireless service' means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v)).'

(b) RADIO FREQUENCY EMISSIONS- Within 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93-62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.

(c) AVAILABILITY OF PROPERTY- Within 180 days of the enactment of this Act, the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.

## TECHNICAL INFORMATION CONCERNING CELLULAR, SPECIALIZED MOBILE RADIO AND PERSONAL COMMUNICATIONS SERVICES

April 1996

### Cellular Information

The FCC established rules and procedures for licensing cellular systems in the United States and its Possessions and Territories. These rules designated 306 Metropolitan Statistical Areas and 428 Rural Service Areas for a total of 734 cellular markets and spectrum was allocated to license 2 systems in each market. Cellular is allocated spectrum in the 824-849 and 869-894 MHz ranges. Cellular licensees are generally required to license only the tower locations that make up their outer service contour. Licensees desiring to add or modify any tower locations that are within an already approved and licensed service area do not have to submit an application for that location to be added to their cellular license, although they may need FCC approval if the antenna would constitute a major environmental action (See question 2, below) or would exceed the criteria specified in Part 17 of the FCC's Rules ("Construction, Marking and Lighting of Antenna Structures"). Part 17 includes criteria for determining when construction or placement of a tower would require prior notification to the Federal Aviation Administration (FAA). (See question 3, below.)

A cellular system operates by dividing a large geographical service area into cells and assigning the same frequencies to multiple, non-adjacent cells. This is known in the industry as frequency reuse. As a subscriber travels across the service area the call is transferred (handed-off) from one cell to another without noticeable interruption. All the cells in a cellular system are connected to a Mobile Telephone Switching Office (MTSO) by landline or microwave links. The MTSO controls the switching between the Public Switched Telephone Network (PSTN) and the cell site for all wireline-to-mobile and mobile-to-wireline calls.

### Specialized Mobile Radio (SMR) Information

Specialized Mobile Radio (SMR) service licensees provide land mobile communications on a commercial (*i.e.*, for profit) or private basis. A traditional SMR system consists of one or more base station transmitters, one or more antennas and end user radio equipment which often consists of a mobile radio unit either provided by the end user or obtained from the SMR operator. The base station receives either telephone transmissions from end users or low power signals from end user mobile radios.

SMR systems operate in two distinct frequency ranges: 806-821/851-866 MHz (800 MHz) and 896-901/935-940 MHz (900 MHz). 800 MHz SMR services have been licensed by the FCC on a site-by-site basis, so that the SMR provider must approach the FCC and receive a license for each and every tower/base site. In the future the FCC will license this band on a wide-area market approach. 900 MHz SMR was originally licensed in 46 Designated Filing Areas (DFAs) comprised of only the top 50 markets in the country. The Commission is in the process of auctioning the remainder of the United States and its Possessions and Territories in the Rand McNally defined 51 Major Trading Areas.

### PCS Information

Broadband PCS systems are very similar to the cellular systems but operate in a higher frequency band, in the 1850-1990 MHz range. One other difference is that the FCC used different market areas for licensing purposes. The FCC used the Rand McNally definitions for 51 Major Trading Areas (MTAs) and 493 Basic Trading Areas (BTAs). PCS was allocated spectrum for six Broadband PCS systems and 26 Narrowband systems. The six Broadband PCS systems will be licensed as follows: two Broadband PCS licenses will be issued for each of the 51 MTAs and four for each of the 493 BTAs. The 26 Narrowband systems will be licensed as follows: eleven Narrowband PCS licenses will be issued for nationwide systems, six for each of five regional areas, seven for each of the 51 MTAs and two for each of the 493 BTAs.

PCS licensees are issued a blanket license for their entire market area and are not required to submit applications to license individual cell sites unless construction of the facility would be a major environmental action or would require FAA notification. Major environmental actions are defined by the National Environmental Policy Act of 1969 that is discussed in question 2, below. Therefore, the FCC has no technical information on file concerning PCS base stations.

### Frequently asked questions concerning tower siting for personal wireless services.

#### **1. Do local zoning authorities have any authority to deny a request for tower siting?**

**Answer:** Yes. The Telecommunications Act of 1996 specifically leaves in place the authority that local zoning authorities have over the placement of personal wireless facilities. It does prohibit the denial of facilities siting based on RF emissions if the licensee has complied with the FCC's regulations concerning RF emissions. It also requires that denials be based on a reasoned approach, and prohibits discrimination and outright bans on construction, placement and modification of personal wireless facilities.

**2. What requirements do personal wireless communications licensees have to determine whether a site is in a flood plain? A historical sites must also comply with the National Environmental Policy Act of 1969 (NEPA), as well as other mandatory federal environmental statutes. The FCC's rules that implement the federal environmental statutory provisions are contained in sections 1.1301-1.1319. The FCC's environmental rules place the responsibility on each applicant to investigate all the potential environmental effects, and disclose any significant effects on the environment in an Environmental Assessment (EA), as outlined in section 1.1311, prior to constructing a tower. The applicant is required to consult section 1.1307 to determine if its proposed antenna structure will fall under any of the listed categories that may significantly affect the environment. If it does, the applicant must provide an EA prior to proceeding with the tower construction and, under section 1.1312, must await FCC approval before commencing any such construction even if FCC approval is not otherwise required for such construction. The FCC places all proposals that may significantly impact the environment on public notice for a period of 30 days, seeking any public comments on the proposed structures.**

The categories set forth in section 1.1307 include:



**Wilderness Area  
Wildlife Preserve  
Endangered Species  
Historical Site  
Indian Religious Site  
Flood Plain  
Wetlands  
High Intensity White Lights in Residential Neighborhoods  
Excessive Radiofrequency Radiation Exposure**

**3. Are there any FCC regulations that govern where towers can or cannot be placed?**

**Answer:** The FCC mandates that personal wireless companies build out their systems so that adequate service is provided to the public. In addition, all antenna structures used for communications must be approved by the FCC in accordance with Part 17 of the FCC Rules. The FCC must determine if there is a reasonable possibility that the structure may constitute a menace to air navigation. The tower height and its proximity to an airport or flight path will be considered when making this determination. If such a determination is made the FCC will specify appropriate painting and lighting requirements. Thus, the FCC does not mandate where towers must be placed, but it may prohibit the placement of a tower in a particular location without adequate lighting and marking.

**4. Does the FCC maintain any records on tower sites throughout the United States? How does the public get this information (if any)?**

**Answer:** The FCC maintains a general tower database on the following structures: (1) any towers over 200 feet, (2) any towers over 20 feet on an existing structure (such as a building, water tower, etc.) and (3) towers that are close to airports that may cause potential hazards to air navigation. The FCC's licensing databases contain some base site information for Cellular and SMR systems. The general tower database and the Cellular and SMR data that may be on file with the FCC is available in three places:

(1) Cellular licensing information is available in the Public Reference Room of the Wireless Telecommunications Bureau's Commercial Wireless Division. The Public Reference Room is located on the fifth floor of 2025 M Street, NW, Washington, DC 20554, telephone (202)418-1350. On-line database searches of cellular licensing information along with queries of the FCC's general tower database can also be accomplished at the Public Reference Room.

(2) People who would like to obtain general tower information through an on-line public access database should call or write Interactive Systems, Inc., 1601 North Kent St., Suite 1103, Arlington, VA 22209, telephone 703-812-8270.

**From:**Cooper,Louis  
**Sent:**Thursday,January05,20171:14PM  
**To:**Mendoza,ScottP.  
**Subject:** Electromagnetic radiation from cell towers

Scott

As per your request I have reviewed literature by the American Cancer Society and the National Cancer Institute with regards to potential effects of cell phone tower radio wave exposures. Both of these agencies and the other agencies and experts that they cited all indicated, there is no evidence that these exposures lead to any excess cancers. I also contacted Dr. Nathan LaCross Epidemiologist/Toxicologist/Risk Assessor for the Utah State Department of Health (UDOH). He sent me a link to a study conducted by UDOH, as well as his own comments, specific to this issue. I will forward you his email. If you need further information or assistance please contact me or doctor LaCross.

**From:**NathanLaCross[<mailto:nlacross@utah.gov>]  
**Sent:**Thursday,January05,201711:02AM  
**To:**Cooper,Louis<[cooper@co.weber.ut.us](mailto:cooper@co.weber.ut.us)>  
**Subject:** Electromagnetic radiation from cell phone towers

Hi Louis,

As we discussed over the phone, here's the link to the technical assist document we wrote a couple of years ago. It's a brief review of the literature on the potential health effects from exposure to radiofrequency (RF) electromagnetic radiation from cell phone towers. The document goes into greater detail and contains references, but there's a brief(ish) summary of it below.

[www.health.utah.gov/enviroepi/appletree/technicalassists/RF-EMF.pdf](http://www.health.utah.gov/enviroepi/appletree/technicalassists/RF-EMF.pdf)

There have been many studies of both short-term and long-term health effects of exposure to RF radiation typical of cell phone towers. To date, evidence for adverse health effects at these levels of exposure is ambiguous and unproven, and no causal link between exposure to RF radiation from base stations and harmful biological effects has been established.

It is important to note that "radiation" does not mean "radioactive". The RF radiation from cell phone towers is a form of non-ionizing radiation, like visible light and microwaves. Exposure to radiation (including RF, light, etc.) decreases very rapidly with distance. A person twice as far away from an antenna will receive roughly a quarter of the exposure (this relationship is known as the inverse-square law).

The main effect of radiofrequency energy on the human body is heating of the tissues. At the frequencies and power levels used by cell phone towers, the majority of energy is absorbed by the skin and results in a negligible rise in temperature at most. The human body can easily adjust to small increases in temperature, just as it does during strenuous activities like exercise.

Cell phones themselves are of potentially higher concern than the towers. While they are much lower in transmitting power (0.1 - 2 watts) than towers (10 - 50 watts), they are typically used very close to the body, resulting in exposures up to 1,000 times higher than those associated with towers. Most health effects associated with cell phones have been limited to people with the highest cumulative use.

I hope this helps. Let me know if you or others have any questions or concern.

--

Nathan LaCross, Ph.D., MPH

Epidemiologist

Environmental Epidemiology Program

Utah Department of Health

Phone: 801-538-6705

Fax: 801-538-6564