



**Environmental  
Planning  
Commission**

**Agenda Number: 09  
Project Number: 1010626  
Case Number: 15EPC-40055  
November 12, 2015**

**Staff Report**

**Agent** Kevin Provance, Black & Veatch Corp.  
**Applicant** Verizon Wireless  
**Request** Waiver- Site Development Plan,  
Wireless Telecommunications  
Facility (WTF) Landscaping  
Requirements  
[Zoning Code §14-16-3-17(F)]  
**Legal Description** Tract P-1, a replat of Tract P, La Reina  
De Las Altos  
**Location** the SE corner of Morris St. and  
Comanche Rd. (3640 Morris St. NE)  
**Size** Approximately 0.55 acre  
**Zoning** C-1, no change proposed

**Staff Recommendation**

**That the EPC conditionally grant the waiver, based on the Findings beginning on Page 13, and subject to the Conditions of Approval beginning on Page 15.**

**Staff Planner**

**Catalina Lehner, AICP-Staff Planner**

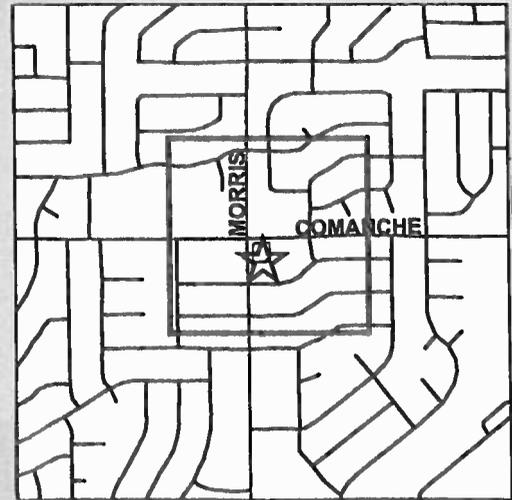
**Summary of Analysis**

This request is for a waiver of Subsection (F) of the Wireless Telecommunications (WT) regulations of Zoning Code §14-16-3-17, which requires that a free-standing wireless telecommunication facility (WTF) be surrounded with landscaping.

The EPC has the authority to waive certain provisions of the WT regulations, such as landscaping. A future monopole (WTF), which has not yet been applied for, is desired between buildings. Landscaping at that location is not practical and would not survive. The applicant proposes to place landscaping elsewhere on the subject site.

Affected neighborhood representatives were notified as required and voiced support to the property owner. Nearby property owners were also notified as required. An individual called to express opposition to a future cell tower on the subject site.

The EPC can: 1) grant the waiver, 2) deny the waiver, or 3) grant the waiver subject to conditions. Staff recommends the third option.



City Departments and other interested agencies reviewed this application from 10/5/2015 to 10/16/2015.  
Agency comments used in the preparation of this report begin on Page 17.



# Project #1010626



1:787

## Legend

- Bernalillo County Parcels
- Municipal Limits**
  - Corrales
  - Edgewood
  - Los Ranchos
  - Rio Rancho
  - Tijeras
  - UNINCORPORATED
- World Street Map

## Notes

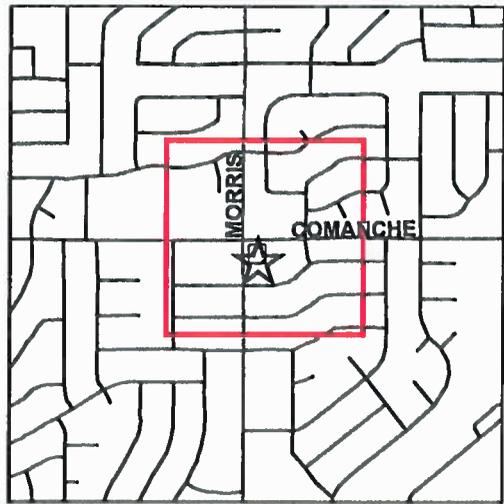
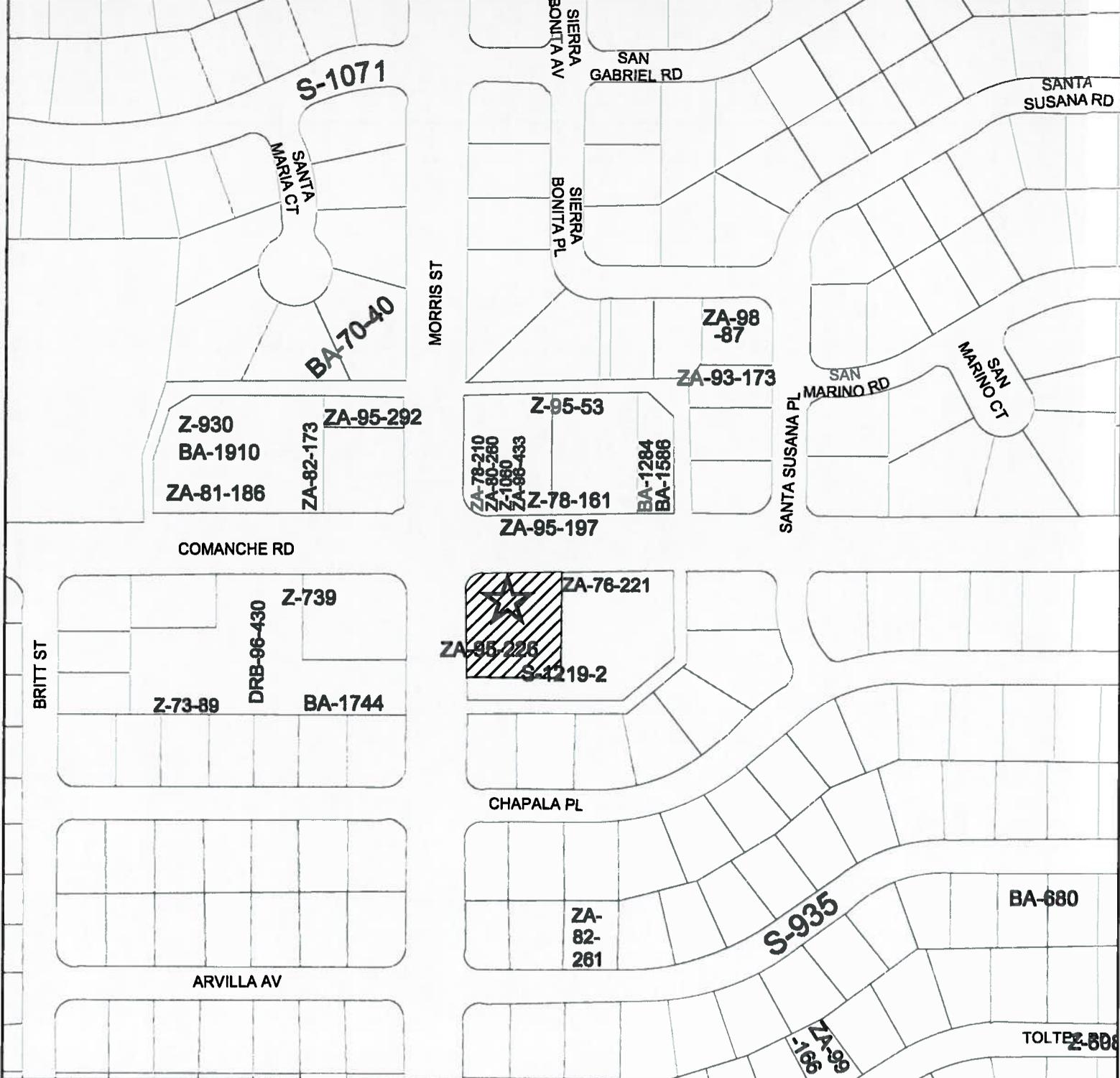
This map is a user generated static output from [www.cabq.gov/gis](http://www.cabq.gov/gis) and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

**THIS MAP IS NOT TO BE USED FOR LEGAL PURPOSES**

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WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
10/7/2015  
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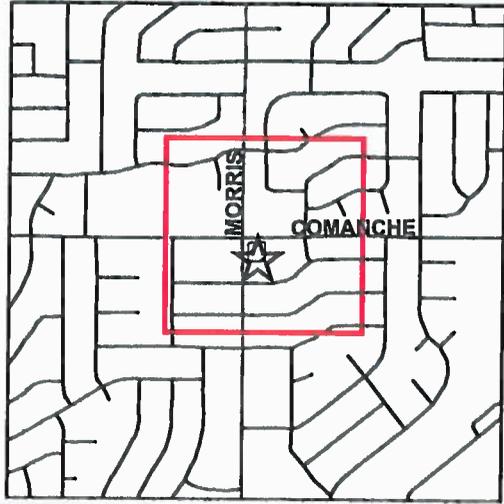
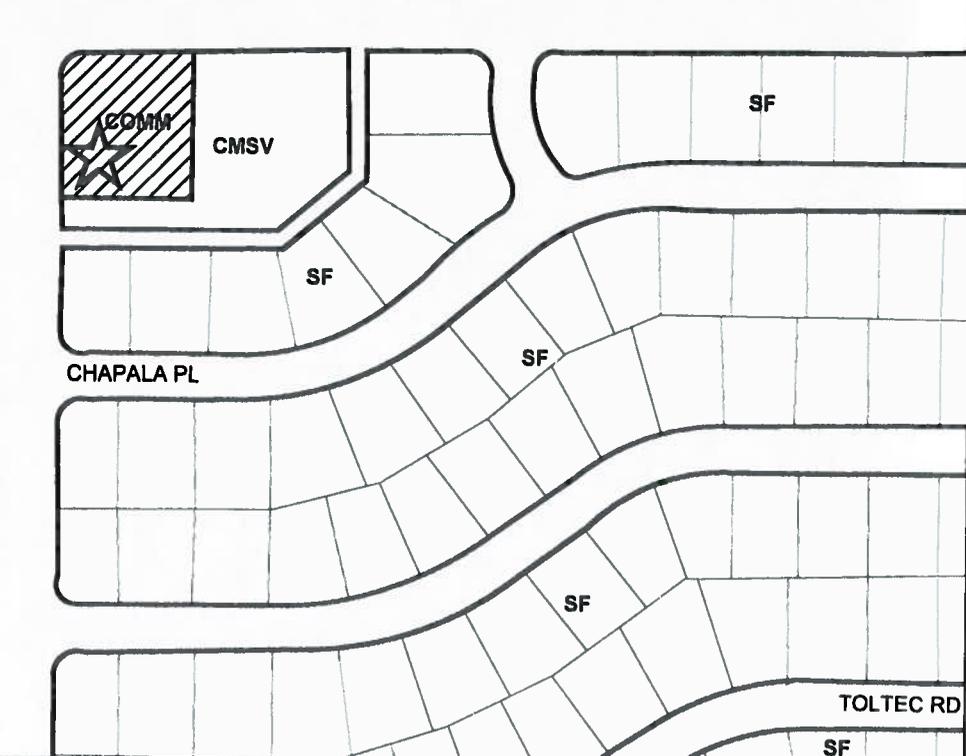
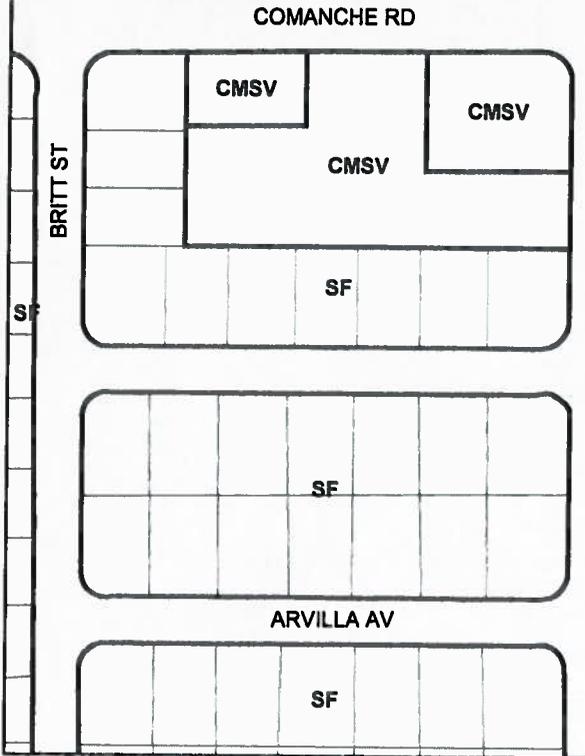
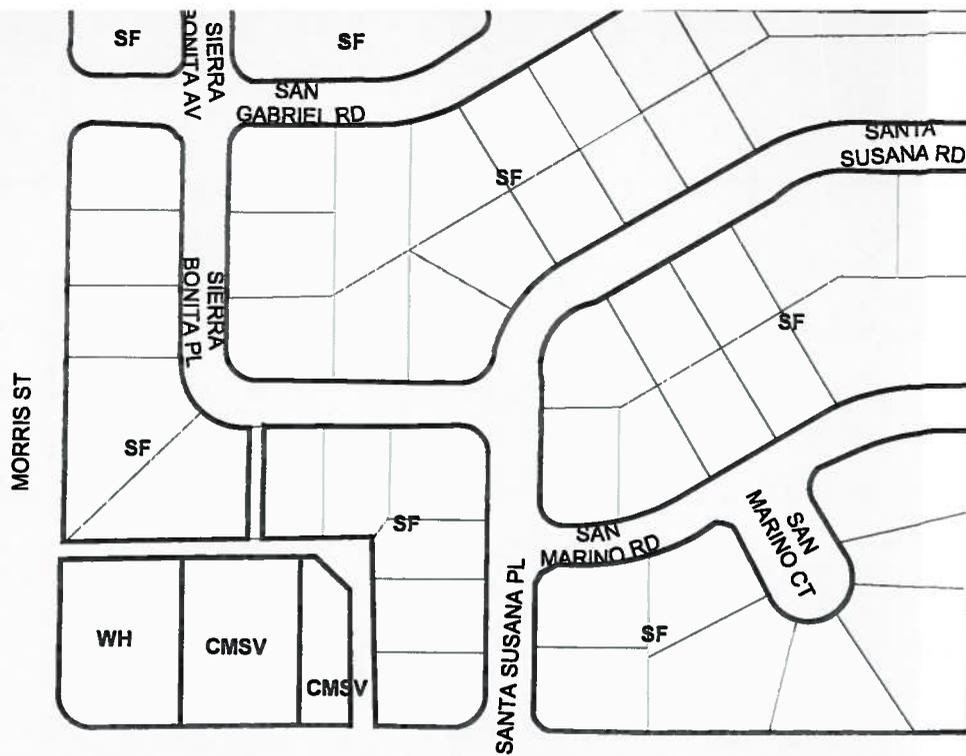
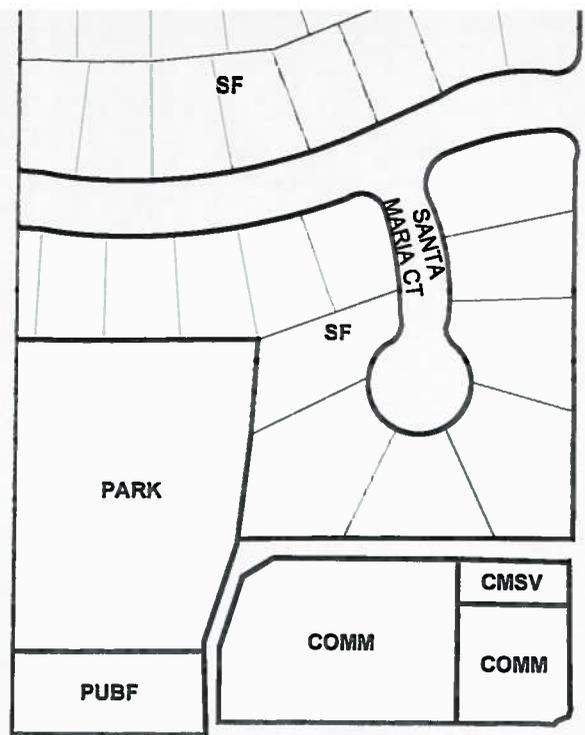
# HISTORY MAP

Note: Grey shading indicates County.



1 inch = 200 feet

Project Number:  
1010626  
Hearing Date:  
11-12-2015  
Zone Map Page: G-21  
Additional Case Numbers:  
15EPC 40055



# LAND USE MAP

Note: Grey shading indicates County

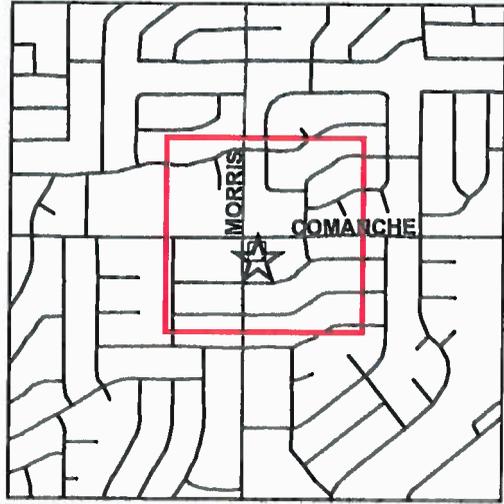
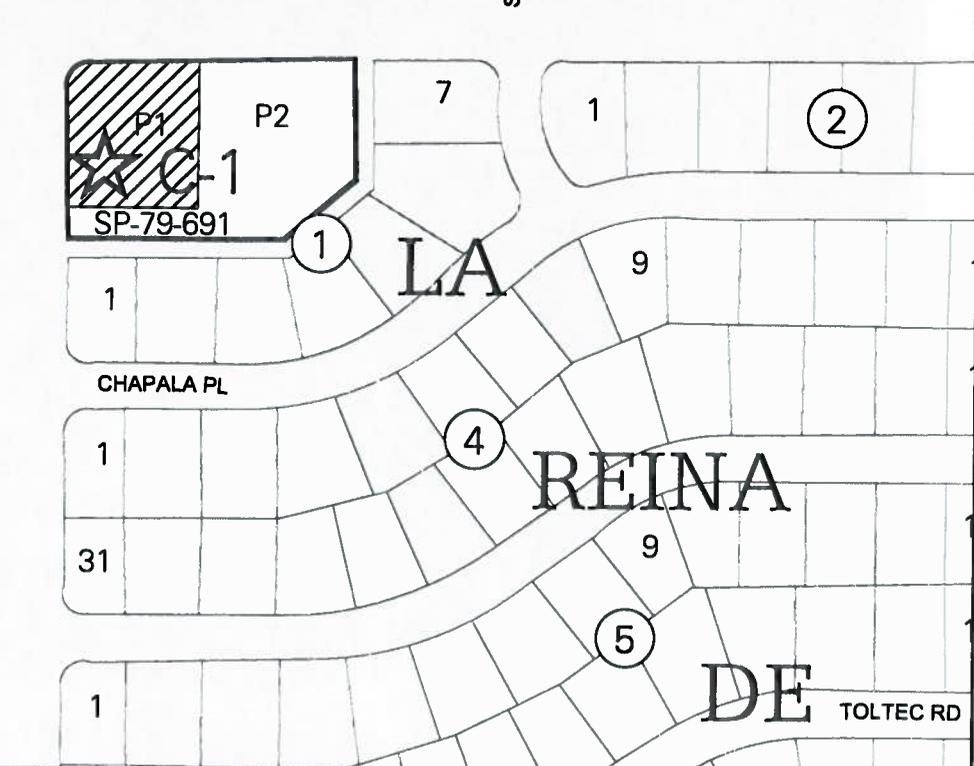
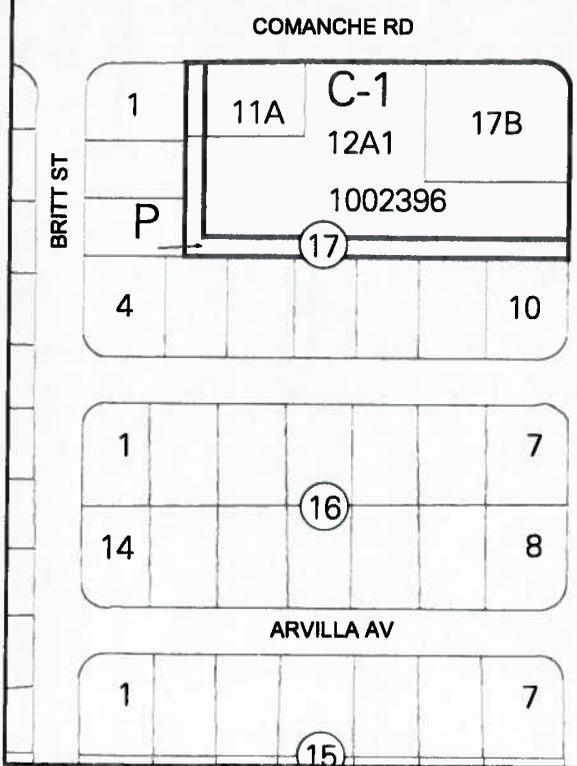
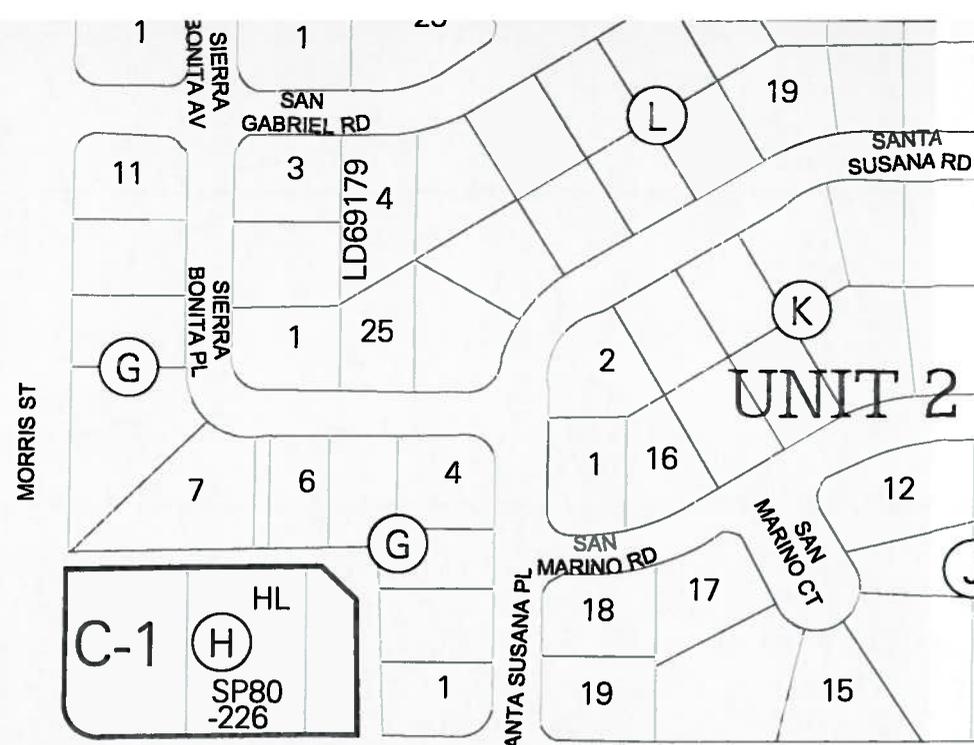
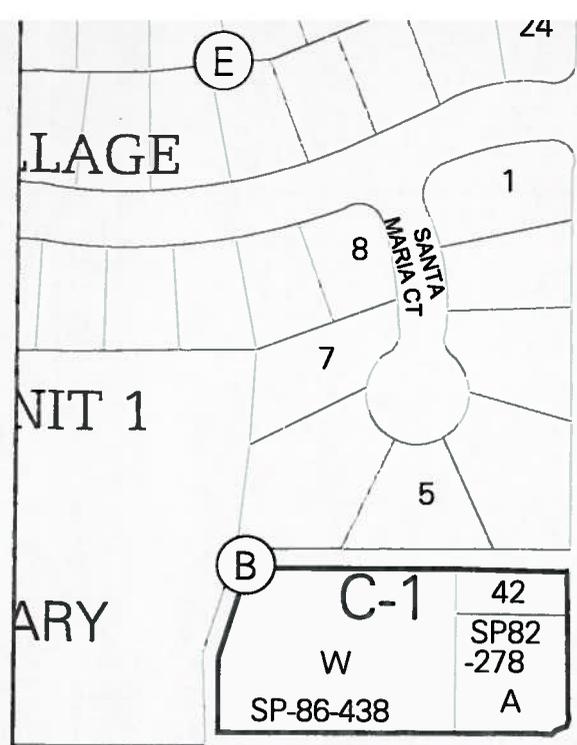
## KEY to Land Use Abbreviations

- AGRI Agriculture
- COMM Commercial - Retail
- CMSV Commercial - Service
- DRNG Drainage
- MFG Manufacturing
- MULT Multi-Family or Group Home
- PARK Park, Recreation, or Open Space
- PRKG Parking
- PUBF Public Facility
- SF Single Family
- TRAN Transportation Facility
- VAC Vacant Land or Abandoned Buildings
- WH Warehousing & Storage



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Hearing Date:  
11-12-2015  
Zone Map Page: G-21  
Additional Case Numbers:  
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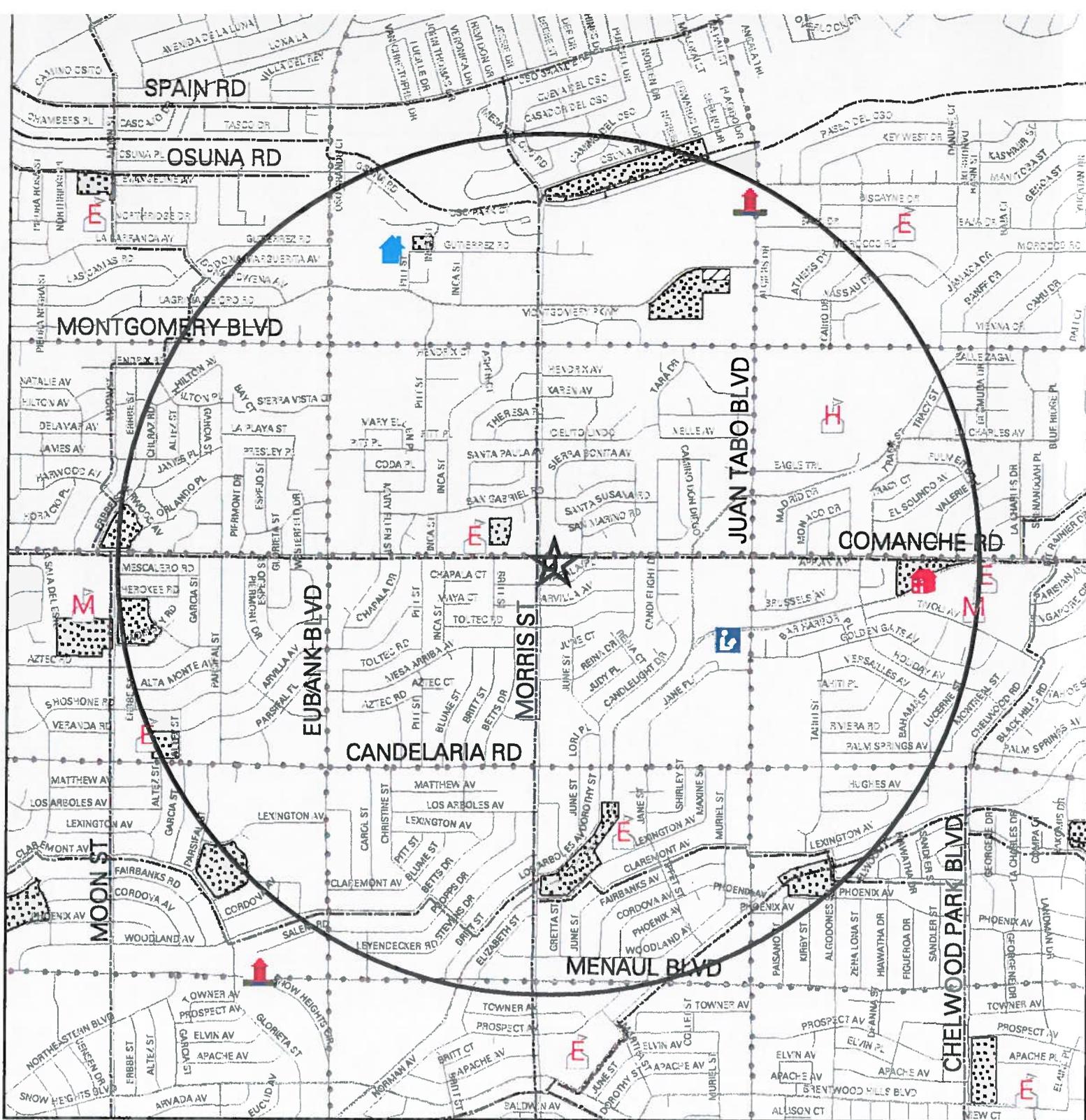
### ZONING MAP

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1 inch = 200 feet

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## Public Facilities Map with One-Mile Buffer

- |  |                      |   |                         |   |                      |   |                             |
|--|----------------------|---|-------------------------|---|----------------------|---|-----------------------------|
|  | COMMUNITY CENTER     |  | FIRE                    |  | APS Schools          |  | Landfill Buffer (1000 feet) |
|  | MULTI-SERVICE CENTER |  | POLICE                  |  | ABQ Bike Facilities  |  | Landfills designated by EHD |
|  | SENIOR CENTER        |  | SHERIFF                 |  | Proposed Bike Routes |  | Developed County Park       |
|  | LIBRARY              |  | SOLID WASTE             |  | ABQ Ride Routes      |  | Undeveloped County Park     |
|  | MUSEUM               |  | Albuquerque City Limits |   |                      |  | Developed City Park         |
|  |                      |   |                         |   |                      |  | Undeveloped City Park       |

Project Number: 1010626



**I. AREA CHARACTERISTICS AND ZONING HISTORY**

*Surrounding zoning, plan designations, and land uses:*

	<b>Zoning</b>	<b>Comprehensive Plan Area; Applicable Rank II &amp; III Plans</b>	<b>Land Use</b>
<b>Site</b>	C-1	Established Urban	Auto repair shop
<b>North</b>	C-1	Established Urban	Auto repair shop (diesel)
<b>South</b>	C-1, R-1	Established Urban	Part of lot adjacent east, then single-family homes
<b>East</b>	C-1	Established Urban	Dance studio
<b>West</b>	C-1	Established Urban	Gymnastics school

**II. INTRODUCTION**

In the City of Albuquerque, cell sites and cell towers are referred to using the broader term Wireless Telecommunication Facility, or WTF, a defined term in the City’s Zoning Code. The Wireless Telecommunications (WT) Regulations, found in Zoning Code §14-16-3-17, establish basic regulations, application requirements and parameters for WTF siting. In Albuquerque, concealment of WTFs is required; the design must be concealed and is required to blend in contextually with its surroundings.

The Planning Department Director’s designee (the “wireless designee”) is tasked with determining whether or not a proposed WTF complies with the City’s WT Regulations. The wireless designee is responsible for issuing a written decision regarding a proposed WTF. Wireless applications are not given conditions of approval, and must be complete. Unlike many jurisdictions, in the City of Albuquerque the review process for WTF applications is administrative and does not require a public hearing unless a waiver is involved.

New build sites, or sites proposed to be modified in a way that could affect the site’s concealed nature, are reviewed by the wireless designee. Other applications, such as placing antennas on non-concealed structures or PNM poles, antenna swap-outs and addition of back-up generators, are reviewed by Zoning Staff.

**Current Request**

Staff has been working with agents for Verizon Wireless (the applicant) regarding a WTF on the subject site. The applicant wants to develop a free-standing, monopole WTF to be sited between a building on the subject site and a building on the adjacent property to the east, which is 5 feet from the subject site’s eastern property line. Through discussions, it became apparent that the required landscaping would not be practical, or likely to survive, in the location desired by the applicant.

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The current request (Project #1010626, 15EPC-40055) is for relief (a waiver) of the landscape requirement associated with a free-standing WTF. The application for the WTF itself has not been submitted yet.

Pursuant to §14-16-3-17(G) of the WT regulations, the Environmental Planning Commission (EPC) has the authority to waive the landscaping requirement. The wireless designee is not authorized to decide a waiver request. The decision regarding the WTF itself, a separate application, will remain the task of the wireless designee (Current Planning, Senior Planner).

Subsection (F) of the WT Regulations requires that new, free-standing WTFs be surrounded by landscaping. The standard, minimum 6 foot landscape buffer with 75% coverage with living, vegetative materials is required around the WTF. The applicant proposes to not landscape around the future WTF due to its location between buildings, but is willing to provide landscaping in two other areas of the subject site where it is needed. Each area is a closed access point; one is on Morris Rd. NE and the other is on Comanche Rd. NE (see Section IV of this report for discussion of the waiver site development plan).

### ***Context***

The area is characterized by single-family homes and neighborhood commercial uses, which are located at (and near) the intersection of Comanche Rd. and Morris St. An established auto repair shop occupies the subject site. To the north, across Comanche Rd., is an auto repair shop that specializes in diesel repair. To the south is a narrow portion of the lot adjacent east, which contains a dance studio. Further south are single-family homes. To the west is a gymnastics school.

The subject site is not in a designated Activity Center. No sector development plan applies.

### ***History***

The C-1 zone is most likely the original zone on the subject site. In 1995, the Zoning Hearing Examiner approved a conditional use (ZA-95-226) to allow auto trailer and truck rental and storage, though the site appears to have been developed originally as a gas station (note the position of the existing building in relationship to the street). Presently, an auto repair business operates on the subject site.

At its December 17, 2009 hearing, the EPC approved a landscaping waiver for a site on the south side of Lomas Blvd., just east of Louisiana Blvd. (Project #1007674, 09EPC-40059). In this case, a cypress tree WTF (mono-cypress) was proposed in the middle of the parking lot, with the equipment enclosure in the site's SW corner. The waiver made it possible to not have to landscape around the base of the cypress tree WTF. The Jerry Kline NA opposed the waiver and appealed the EPC's decision, but later withdrew the appeal (AC-10-3). The cell site was constructed.

### ***Zoning***

The subject site is zoned C-1. The C-1 Neighborhood Commercial zone (Zoning Code §14-16-2-16) "provides suitable sites for office, service, institutional, and limited commercial uses to satisfy the

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day-to-day needs of residential areas.” Evidence of C-1 zoning at the intersection of Comanche Rd. and Morris St. dates back to 1963 (ref: Zone Atlas, 1963), and was possibly in place earlier.

Setbacks in the C-1 zone (which references the O-1 zone) are as follows: not less than 5 ft. for the front and corner side yards, and 11 ft. from the junction of a driveway or alley and a public sidewalk (or planned sidewalk) location.

### ***Long Range Roadway System***

The 2040 Long Range Roadway System (LRRS) map, produced by the Mid-Region Metropolitan Planning Organization (MRMPO), identifies the functional classifications of roadways. Comanche Rd. and Morris St. are both Major Collectors.

### ***Definitions (Zoning Code §14-16-1-5)***

**Collocation.** The location of more than one wireless telecommunications facility at a single location, and utilizing the same structure for mounting of wireless telecommunications antenna, by more than one provider of wireless telecommunication services.

**Free-Standing Wireless Telecommunications Facility.** A wireless telecommunications facility, other than a public utility collocation, that consists of a stand-alone support structure, antennas, and associated equipment. The support structure may be a wooden pole, steel monopole, lattice tower, or similar structure.

**Setback.** The shortest distance between a structure and a lot line or future street line.

**Structure.** Anything constructed or erected above ground level which requires location on the ground or attached to something having a location on the ground but not including a tent, vehicle, vegetation, or public utility pole or line.

**Wireless Telecommunications Facility (WTF).** A facility that transmits and/or receives signals or waves radiated or captured by a wireless telecommunications antenna. It may include antennas of all kinds including microwave dishes, horns, and other types of equipment for the transmission or reception of such signals, telecommunications tower or similar structures supporting such equipment, equipment buildings or cabinets, parking area, and/or other accessory development.

## ***III. APPLICABLE LAWS, REGULATIONS AND PLANS***

### ***A) The Telecommunications Act of 1996 (“the Act”, in brief)***

In 1996, the Communications Act of 1934 (47 U.S.C. 151 et seq.) was amended to include regulation of personal wireless services. The Telecommunications Act (“the Act”) covers broadcasting, cable, video programming and wireless telecommunications.

The Act contains important provisions concerning wireless telecommunications facilities that are used to provide personal wireless services. Specifically, Section 253 addresses the removal of barriers to entry for the telecommunications industry. State or local regulations cannot prohibit (or

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have the effect of prohibiting) any entity from providing telecommunications service. This means that communities are not allowed to outright ban wireless facilities.

Section 332(c) of the Act regulates state and local government oversight of the siting of personal wireless service facilities. The Act established a comprehensive framework for the exercise of state and local jurisdiction over the placement, construction and modification of such facilities. Section 704(a)(7)(A) states that the Act shall not limit or affect the authority of a State or local government over decisions regarding the placement, construction and modification of personal wireless service facilities.

However, there are limitations on local authority. Local governments are required to not unreasonably discriminate among providers (B)(i), act on applications in a reasonable amount of time (B)(ii), substantiate a denial decision in writing (B)(iii), not regulate based on radio frequency (RF) emissions (B)(iv), and note that an aggrieved party can begin an action in court and may petition the Federal Communications Commission (FCC) for relief.

*Updates to Federal Requirements (in very brief)*

In November 2009, the FCC adopted an order to establish timeframes for review of wireless applications by state and local governments (the "Shot Clock"). Basically, an application must be decided upon in 90 days if it's a collocation and 150 days if it's a new build site. Initial review of an application is allowed 30 days.

On February 12, 2012, Congress passed the "Middle Class Tax Relief and Job Creation Act of 2012". Section 6409(a), a 145-word rider, addresses wireless deployment with respect to facility modifications. It essentially means that the local government is required to approve collocations and equipment swap-outs that do not substantially change the physical dimensions of the facility.

On October 17, 2014, the FCC adopted a report and order to clarify Section 6409(a) and Section 704 of the Act, specifically regarding the substantial change language. The new rules were subsequently published in the Federal Register and became effective around February 2015. The City of Albuquerque updated its wireless regulations to be consistent with the new Federal requirements; the revised City regulations became effective on December 22, 2014 and are found in Bill No. O-14-7 (see attachment).

***B) Wireless Telecommunications Regulations- Zoning Code §14-16-3-17***

The Wireless Telecommunications Regulations (the "WT regulations") are found in Zoning Code §14-16-3-17. They establish parameters for WTF siting and application requirements, and apply to all proposed WTFs in the City, whether they are new sites or modifications of existing sites.

The current version of the WT regulations, Council Bill No. O-14-7, became effective on December 22, 2014 (see attachment). This version, updated to reflect recent Federal revisions regarding substantial change of wireless sites (see above), superseded O-06-40, which became effective on January 21, 2008 and established the requirement that WTFs in Albuquerque be concealed.

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*Landscaping*

Pursuant to Subsection (F) of the WT Regulations, new free-standing WTFs must be surrounded by landscaping. A landscaping buffer is required around the wall that surrounds the equipment enclosure, where various WTF components (ex. pole, equipment, etc.) are located. The landscaping buffer, a minimum of 6 feet wide and covered with 75% living, vegetative materials, is intended help mitigate the visual impact of the WTF.

The request is for a waiver of the landscaping requirement for a future, free-standing WTF. Pursuant to Subsection (F)(1), the EPC can waive the landscaping requirement where it finds that this requirement is not useful to achieving the intent of the Zoning Code [§14-16-1-3, see attachment]. The wireless designee does not have the authority to grant or deny a waiver of the landscaping (or any other) requirement.

The WT Regulations contain the following landscaping requirements:

“(F) Landscaping and Screening:

- (1) All free-standing wireless telecommunications facility shall include landscaping planted and maintained according to a Landscaping Plan approved by the Planning Director or his/her designee; however, the Planning Commission may waive this requirement where the Planning Commission finds this requirement is not useful to achieving the intent of this Zoning Code.
- (2) All free-standing wireless telecommunications facilities shall be surrounded by solid fence or wall, at least six feet high and not more than nine feet high, and landscaping to properly screen ground equipment facilities from public view. Chain link with slats shall not constitute a solid fence or wall.” [emphasis added]

The applicant intends to develop a free-standing WTF on the subject site; this will be a separate application, in addition to the waiver request being considered now. The walled enclosure area would contain the proposed monopole and associated equipment shelter.

Though a site development plan for the future WTF was submitted as part of this process, the EPC’s decision is limited to the substance of the landscaping waiver. A landscaping plan (Sheet LS-1) is included (see Section V of this report).

*Waiver Provisions*

Subsection (G) of the WT Regulations contains waiver provisions that govern the requested waiver pursuant to Subsection (F) (see above). The EPC can grant the waiver only if it finds, in writing, that the waiver substantially:

- (1) (a) Is in the best interest of the community as a whole;
- (b) Will expedite the approval of an antenna, tower, or tower alternative;
- (c) Will not jeopardize public health, safety and welfare;

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- (d) Will either ameliorate the adverse impacts of antenna and tower proliferation or the adverse impact of requiring new construction of towers or antennas; and
  - (e) Will better serve the purposes of this section.

These criteria are required to become part of the findings of fact to support the EPC's decision regarding the proposed landscaping waiver. See Section IV of this report for Staff's analysis of these criteria.

Subsection (G) also establishes a list of facts for the EPC to consider in reviewing an application for a waiver:

- (2) (a) The height of the proposed tower;
- (b) The proximity of the tower antenna to residential structures and residential district boundaries;
- (c) The nature of uses on adjacent and nearby properties;
- (d) The surrounding topography;
- (e) The surrounding vegetation and foliage;
- (f) The design of the tower or antenna, with particular reference to design characteristics that have the effect of reducing or eliminating any visual obtrusiveness;
- (g) The proposed ingress and egress;
- (h) The availability of suitable existing towers or other structures; and
- (i) Such other factors as may be relevant.

The abovementioned, including any other facts deemed relevant, are required to be considered in reaching a decision regarding a waiver. These criteria will become part of the findings of fact.

**C) *Albuquerque/Bernalillo County Comprehensive Plan- Rank I***

The subject site is located in an area that the Albuquerque/Bernalillo County Comprehensive Plan has designated Established Urban. The Comprehensive Plan goal of Developing and Established Urban Areas is "to create a quality urban environment which perpetuates the tradition of identifiable, individual but integrated communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work areas and life styles, while creating a visually pleasing built environment." Applicable policies include:

- ⇒ Note: This policy discussion is limited to the proposed landscaping only (see Sheet LS-1), which is the current request. The WTF itself has not yet been applied for.

*Land Use Policies-*

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Policy II.B.5d: The location, intensity and design of new development shall respect existing neighborhood values, natural environmental conditions and carrying capacities, scenic resources, and resources of other social, cultural, recreational concern.

*The proposed enclosure wall and associated landscaping can be considered new development. The proposed landscaping buffers would not be an intense use in general; their location and design would not adversely affect social, cultural and recreational resources and would somewhat improve scenic resources in the vicinity. The request generally furthers Policy II.B.5d-location and intensity/various resources.*

Policy II.B.5m: Urban and site design which maintains and enhances unique vistas and improves the quality of the visual environment shall be encouraged.

*The proposed landscape buffers would generally improve the quality of the visual environment in the vicinity of the subject site by adding additional landscaping the existing landscape area. The request generally furthers Policy II.B.5m-design/quality of the visual environment.*

*Developed Landscape-*

Goal: To maintain and improve the natural and the developed landscapes' quality.

*The subject site lies in the Established Urban area. In general, the addition of landscape buffers would improve the quality of the developed landscape. In this case, the proposed landscape buffers will be additional landscaping in the existing landscape areas around the perimeter of the site and will be fully visible from the street. . The request furthers the Developed Landscape Goal.*

**IV. ANALYSIS- WAIVER OF WTF LANDSCAPING REQUIREMENTS**

⇒ Note: The request pertains only to a waiver of the landscaping requirement (see Sheet LS-1). A brief description of the site development plan for is provided in Section V of this report.

***Review Authority***

The WT regulations give review authority over the landscape requirements to the EPC; the EPC may waive the landscaping requirement upon finding that such requirement is not useful for achieving the intent of the Zoning Code [Subsection (F)(1)]. The fact that the WT regulations contain waiver provisions suggests that there are instances when a waiver could be warranted.

***Reason for Waiver Request***

The applicant presented a general reason for the requested waiver of the landscaping requirement in a letter submitted September 29, 2015 (see attachment). The applicant states that landscaping that would normally be provided around the base of the facility will not be visible from the street and that, if the landscaping were to be planted, it would not add to the screening or concealment of the facility. Additionally, the area where the landscaping would be planted is surrounded by buildings

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and within a parking area; these factors would make it difficult for the landscaping to grow successfully.

***Proposed Landscaping Plan (see Sheet LS-1)***

*Lease Area (425 sf):* The Lease Area, which in this case corresponds with the equipment area boundaries, contains the proposed monopole and the enclosure wall around it, and would be located to the west of the building, between the building and the building on the lot to the east. Landscaping is not proposed around the Lease Area.

***General Analysis***

The future WTF would not comply with Subsection (F) of the WT Regulations, which require that landscaping surround the WTF equipment area. To achieve compliance, landscaping would be needed on all four sides. Subsection (F)(2) states (in part) that:

“...A free-standing wireless telecommunications facility shall be surrounded by solid fence or wall, at least six feet high and not more than nine feet high, and landscaping...” [emphasis added].

The future WTF would be located on the subject site’s eastern side, in back of the existing building. Another existing building is located 5 feet east of the property line (see Sheets Z1 and SU1). The buildings would provide some contextual concealment for the monopole and would help screen it. The equipment enclosure, which in this case would correspond to the lease area boundaries, would not be visible from the west and east, and only somewhat visible from the north and south. Landscaping on the enclosure’s western and eastern sides would not receive adequate light to survive, and the buffer on the eastern side would be 5 feet instead of 6 feet wide.

It would be possible to landscape the northern and southern sides of the enclosure and increase the lease area to accommodate the requirement. The northern edge of the enclosure would be set back 77 feet into the site and the southern edge of the enclosure would be set back 51 feet into the site. Therefore, landscaping on the northern side would be located at the 71 foot mark and at the 46 foot mark on the southern side. Landscaping in these locations, though possible, would not have that great an effect on the overall aesthetics of the subject site or its environs. In contrast, placing landscaping along Morris St. and Comanche Rd., in areas where no landscape was previously, would help improve the visual environment and would be more readily visible by more people.

***Waiver Criteria***

To grant such a waiver, the EPC must find in writing that the waiver:

- (C)(1) (a) Is in the best interest of the community as a whole;
- (b) Will expedite the approval of an antenna, tower, or tower alternative;
- (c) Will not jeopardize public health, safety and welfare;
- (d) Will either ameliorate the adverse impacts of antenna and tower proliferation or the adverse impact of requiring new construction of towers or antennas; and

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(e) Will better serve the purposes of this section.

Overall, Staff finds that most of the abovementioned criteria are fulfilled. Provided the future, proposed WTF is found to comply with the WT regulations, the WTF would allow for the expansion and/or provision of wireless services for the community (a) which would not jeopardize the public health, safety and welfare (c) since WTFs must meet the Federal Communication Commission (FCC) health and safety standards. Though the waiver is a separate application, it will help facilitate approval of the applicant's forthcoming WTF application for the desired monopole WTF.

Staff finds that the requested waiver would also fulfill criteria (d) and (e). The intent of the WT regulations' landscaping requirement is to screen ground equipment from public view and thereby lessen the adverse impact on the visual and physical environment. Providing additional landscaping along both street will help improve the subject site and its environs and somewhat mitigate the visual impacts of the future WTF (d). A similar argument can be made with respect to (e), that the additional landscape along the street would better serve the purposes of this section (meaning the WT regulations) because the landscaping will be visible to the public and will improve the overall appearance of the subject site.

The facts to be considered by the EPC in reviewing the waiver application are listed below, followed by Staff analysis of each as required pursuant to §14-16-3-17(G)(2):

- A. The height of the proposed tower [(G)(2)(a)]: The future monopole WTF, at 50 feet, is 15 feet lower than the maximum height allowed, which will help it blend in better in the area, which is characterized by relatively low building heights and lack of verticality.
- B. The proximity of the tower antenna to residential structures and residential district boundaries [(G)(2)(b)]: The future WTF, on a C-1 zoned site, would be setback 106.5 feet from the R-1 zone to the south. A minimum setback of 100 feet is required.
- C. The nature of uses on adjacent and nearby properties [(G)(2)(c)]: The adjacent property to the east, and properties across both streets, are zoned C-1 and contain small commercial uses. The properties to the south are zoned R-1 and contain single-family homes. The future WTF would comply with the setback requirement (see B, above) and be located in between buildings to help minimize its visual impact.
- D. The surrounding topography [(G)(2)(d)]: The area is developed and topography is not noticeable, so therefore is not a significant factor in siting.
- E. The surrounding vegetation and foliage [(G)(2)(e)]: The landscaping at the intersection of Comanche Rd. and Morris St. is limited to that on the commercial sites. The subject site is minimally landscaped and would benefit from the addition of the two, new landscape buffers.
- F. The design of the tower or antenna, with particular reference to design characteristics that have the effect of reducing or eliminating any visual obtrusiveness [(G)(2)(f)]: The future

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monopole WTF would be located between buildings and be painted tan to blend with its surroundings. Design factors will be discussed further with the application for the future, proposed WTF.

- G. The proposed ingress and egress [(G)(2)(g)]: Ingress and egress would remain unchanged and be from Comanche Rd.
- H. The availability of suitable existing towers or other structures [(G)(2)(h)]: there is little existing verticality in the area. An affidavit addressing other structures in the area will be required, pursuant to 14-16-3-17(C)(2), with the application for the future WTF.
- I. Such other factors as may be relevant [(G)(2)(i)]. None.

***Recommendation & Alternatives***

The EPC is tasked with determining if, and to what extent, the requested waiver of the landscape requirement should be granted given the particulars of the subject site. Three courses of action are available:

1. Grant the waiver as requested, thereby approving the proposed landscaping plan (Sheet LS-1).
2. Deny the waiver, thereby denying the proposed landscaping plan (Sheet LS-1) and requiring landscaping pursuant to the WT regulations.
3. Conditionally grant the waiver, thereby approving a revised version of the landscaping plan (Sheet LS-1) which incorporates conditions of approval.

Staff recommends that the EPC grant the requested waiver of the landscaping requirements. In this case, landscaping around the equipment enclosure/lease area would be of limited utility to the facility's concealment and would not be readily visible by the public. Though more germane to the forthcoming WTF application, locating the future WTF between buildings makes use of the buildings on site to help conceal the facility. Though not very tall, the buildings are usable elements that can contribute to concealment.

Furthermore, landscaping on the western and eastern sides of the enclosure area would not receive adequate sunlight. There is only a five foot setback on the eastern side, and plants in that location are not likely to survive.

In lieu of landscaping around the equipment enclosure/lease area, the applicant plans to install landscaping in two locations on the subject site: along Comanche Rd. and along Morris St. where entrances were closed in the 1990s. The applicant closed these off using railroad ties and left a blank area between existing landscape beds. These areas would become new landscape beds, which would improve the appearance of the subject site and the immediate area. Xeric plants (Saltbush, Apache Plume and Chamisa) and an irrigation system are proposed.

Should the EPC not want to grant the waiver as requested, Staff suggest relief of the landscaping requirement on the western and eastern sides of the equipment enclosure/lease area and

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consideration of landscaping on the northern and southern sides of the equipment enclosure/lease area.

#### ***V. SITE DEVELOPMENT PLAN (INFORMATIONAL)***

⇒ Note: The information provided below is for informational purposes only and pertains to the future WTF application.

##### ***Site Plan Layout / Configuration***

The applicant will propose a free-standing, monopole WTF on the subject site. The proposed WTF and associated equipment will be contained within the enclosure walls of the lease area which, in this case due to the lack of landscaping buffers around it, is the same as the enclosure area.

The 425 sf lease area, to the west and behind the existing building, would contain the future 50 foot monopole and the equipment shelter, backup generator and enclosure walls.

##### ***Vehicular Access, Circulation & Parking***

The lease areas will only need to be accessed occasionally for maintenance purposes. A utility access easement is proposed near the subject site's western side, running north-south.

##### ***Walls/Fences***

Pursuant to §14-16-3-17(F)(1), a free-standing WTF must be surrounded by a solid fence or wall, at least 6 ft. high and not more than 9 ft. high. Chain link with slats does not constitute a solid wall. The proposed enclosure walls are 9 ft. high and made of CMU block, to be painted a tan color.

The required minimum setback in the C-1 zone for a side yard is 5 ft. The proposed enclosure wall will comply with the setback requirement and would be 5 feet from the property line (see Sheets Z1 and SU1).

##### ***Architecture/Design***

The proposed WTF is a 50 ft. monopole, which is a pole with a canister on top to conceal the antennas. The antennas would be contained inside of the pole structure (concealed antennas) as required. Only concealed antennas are allowed pursuant to §14-16-3-17(A)(1).

##### ***Height***

The allowable height for a free-standing WTF is 65 ft. A 75 foot pole would be allowed, provided that more than one carrier can place its equipment thereon (collocation). However, height is one factor evaluated using the WT regulations' Criteria for Concealment [§14-16-3-17(E)]. With little verticality in the immediate area, the taller the WTF the more likely it is to be non-concealed in its setting.

##### ***Lighting & Security, Signage***

No lighting is shown. There are existing street lights on Morris St. and Comanche Rd. The only signage that is permitted for a WTF is signage which is required by State or Federal law.

## **VI. AGENCY & NEIGHBORHOOD CONCERNS**

### ***Concerns of Reviewing Agencies/Pre-Hearing Discussion***

City departments and other interested agencies reviewed this application from 10/5/2015 to 10/16/2015. Few agency comments were received. The Office of Neighborhood Coordination (ONC), Transportation Development, Hydrology, Parks & Recreation, Transit, Albuquerque Public Schools (APS) and the Mid-Region Council of Governments reviewed the request and had no comment. Agency comments begin on p.17 of this report.

### ***Neighborhood Concerns***

The San Gabriel Area Neighborhood Association (NA), the Cielito Lindo NA and the District 8 Coalition of NAs were notified of the request, as required. Property owners within 100 feet of the subject were also notified, as required. A facilitated meeting was neither recommended nor requested. As of this writing, Staff received one phone call. A nearby property owner is opposed to a cell tower on the subject site.

## **VII. CONCLUSION**

This request is for a waiver of the landscape requirement associated with a future, proposed, free-standing WTF on the subject site. Pursuant to §14-16-3-17(G) of the Wireless Telecommunication (WT) regulations, the Environmental Planning Commission (EPC) has the authority to waive the landscape requirement. The wireless designee (Staff) cannot.

The future WTF would not comply with WT regulations, which require that landscaping surround new free-standing WTFs. Landscaping would not be proposed around the equipment enclosure wall/lease area due to the future WTF's location between buildings. The applicant proposes to place landscaping in two new landscaping areas on the subject site.

Overall, the request generally furthers the few, applicable policies in the Comprehensive Plan. Staff finds that the waiver adequately fulfills the WT regulations' waiver criteria and furthers the intent of the Zoning Code.

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***FINDINGS -15EPC-40055, November 12, 2015-Waiver of the Landscaping Requirement for a future Free-Standing Wireless Telecommunications Facility (WTF)***

1. This request is for a waiver of the landscaping requirement for a future free-standing Wireless Telecommunications Facility (WTF) for Tract P-1, a replat of Tract P, La Reina De Las Altos, located at the SE corner of Morris St. and Comanche Rd. (3640 Morris St. NE, the "subject site"). An auto repair shop currently occupies the subject site.
2. The Wireless Telecommunication (WT) regulations require that a free-standing WTF be surrounded by a solid fence or wall and landscaping to properly screen ground equipment facilities from public view [§14-16-3-17(F)]. No landscaping is proposed around the future equipment area. However, the applicant intends to place landscaping elsewhere on the site
3. The applicant is requesting a waiver of the WT regulations' landscape requirement [Subsection (F)] for the following reasons: The base of the proposed monopole would not be visible from Morris St. and Comanche Rd., the landscaping would not be visible by most of the public because it would be located between buildings, and landscaping located between buildings is not likely to receive sufficient sunlight to survive.
4. The Comprehensive Plan, the City of Albuquerque Zoning Code and the Federal Telecommunications Act are incorporated herein by reference and made part of the record for all purposes.
5. The subject site is zoned C-1. A free-standing WTF is a permissive use in the C-1 zone [§14-16-2-16(A)(15)].
6. The subject site lies within the boundaries of the Established Urban Area of the Comprehensive Plan. No sector development plans apply.
7. The request furthers applicable Comprehensive Plan policies. The proposed landscaping buffers on the northern and western sides of the subject site would not be an intense use; their location and design would not adversely affect social, cultural and recreational resources and would generally improve scenic resources in the vicinity (Policy II.B.5d). Landscape buffers in general would improve the quality of the visual environment on and near the subject site (Policy II.B.5m).
8. The request furthers the Developed Landscape Goal. In general, the addition of landscape buffers and new landscaping would improve the quality of the natural and developed landscape on the subject site and in the immediate area. The proposed landscape buffers would be fully visible from the street.

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9. The waiver substantially satisfies the criteria in §14-16-3-17(G)(1) as follows:
- A. The waiver is in the best interest of the community as a whole because it would allow for the expansion and/or provision of wireless services while maintaining the intent of the Zoning Code regarding health, safety and welfare.
  - B. Though the waiver is a separate application, it will help facilitate approval of the applicant's forthcoming WTF application for the desired monopole WTF.
  - C. The waiver would not create a situation that would jeopardize public health, safety and welfare since WTFs are required to meet the Federal Communication Commission (FCC) health and safety standards.
  - D. The waiver will ameliorate the proposed WTF tower's impact on the visual and physical environment by contributing to properly screening ground equipment from public view and supporting a proposed WTF design which separates the equipment area and the tower area.
  - E. The waiver will preserve the intention of properly screening ground equipment from public view while furthering the provision of wireless service within the context of the WT regulations (Section §14-16-3-17).
10. In reviewing the waiver, the EPC has considered the following items as required by §14-16-3-17(G)(2):
- A. The height of the proposed tower [(G)(2)(a)]: The future monopole WTF, at 50 feet, is 15 feet lower than the maximum height allowed, which will help it blend in better in the area, which is characterized by relatively low building heights and lack of verticality.
  - B. The proximity of the tower antenna to residential structures and residential district boundaries [(G)(2)(b)]: The future WTF, on a C-1 zoned site, would be setback 106.5 feet from the R-1 zone to the south. A minimum setback of 100 feet is required.
  - C. The nature of uses on adjacent and nearby properties [(G)(2)(c)]: The adjacent property to the east, and properties across both streets, are zoned C-1 and contain small commercial uses. The properties to the south are zoned R-1 and contain single-family homes. The future WTF would comply with the setback requirement (see B, above) and be located in between buildings to help minimize its visual impact.
  - D. The surrounding topography [(G)(2)(d)]: The area is developed and topography is not noticeable, so therefore is not a significant factor in siting.
  - E. The surrounding vegetation and foliage [(G)(2)(e)]: The landscaping at the intersection of Comanche Rd. and Morris St. is limited to that on the commercial sites. The subject site is minimally landscaped and would benefit from the addition of the two, new landscape buffers.
  - F. The design of the tower or antenna, with particular reference to design characteristics that have the effect of reducing or eliminating any visual obtrusiveness [(G)(2)(f)]: The future monopole WTF would be located between buildings and be painted tan to blend with its surroundings. Design factors will be discussed further with the application for the future, proposed WTF.

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- G. The proposed ingress and egress [(G)(2)(g)]: Ingress and egress would remain unchanged and be from Comanche Rd.
- H. The availability of suitable existing towers or other structures [(G)(2)(h)]: there is little existing verticality in the area. An affidavit addressing other structures in the area will be required, pursuant to 14-16-3-17(C)(2), with the application for the future WTF.
- I. Such other factors as may be relevant [(G)(2)(i)]. None.
11. The WT regulations state that the EPC may waive the landscaping requirement upon finding that such requirement is not useful for achieving the intent of the Zoning Code [§14-16-3-17(F)(1)]. The two new landscape buffers, to be provided in lieu of landscaping around the equipment enclosure/lease area, further the intent of the Zoning Code because they would enhance the appearance of the subject site and immediate area, while allowing for economically sound development that would not adversely affect the public health, safety or welfare.
12. The San Gabriel Area NA, Cielito Lindo NA and the District 8 Coalition of NAs were all notified of the request. A facilitated meeting was neither recommended nor requested. As of this writing, Staff received one phone call. A nearby property owner is opposed to a cell tower on the subject site.

***RECOMMENDATION - 15EPC-40055, November 12, 2015***

**APPROVAL of 15EPC-40055, a Waiver of the Landscaping Requirement for a Future, Free-Standing Wireless Telecommunications Facility (WTF) on Tract P-1, a replat of Tract P, La Reina De Las Altos, located at the SE corner of Morris St. and Comanche Rd. (3640 Morris St. NE), zoned C-1 , based on the preceding Findings and subject to the following Conditions of Approval.**

***CONDITIONS OF APPROVAL - 15EPC-40055, November 12, 2015- Waiver of the Landscaping Requirement for a Proposed Free-Standing Wireless Telecommunications Facility (WTF)***

1. The EPC delegates its authority regarding this site development plan set to the Planning Department Director's designee (the "wireless Designee"). The wireless Designee is responsible for ensuring that all EPC Conditions have been satisfied and that other applicable City requirements have been met. A letter shall accompany the submittal, specifying all modifications that have been made to the site development plan set since the EPC hearing, including how the site development plan set has been modified to meet each of the EPC conditions. Unauthorized changes to the site development plan set, including before or after the administrative decision regarding the pending WTF application, may result in forfeiture of EPC approval.
2. The applicant shall meet with the wireless designee (Staff) prior to submitting the application for the future, proposed WTF on the subject site.

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3. The requirement that landscaping surround the future, proposed free-standing WTF is waived in its entirety. In lieu of this, new landscaping shall be provided as shown on Sheet LS1.
- 

*Catalina Lehner*

***Catalina Lehner, AICP  
Senior Planner***

Notice of Decision cc list:

Kevin Provance, Black & Veatch Corp., 5885 Meadows Rd., Ste. 700, Lake Oswego, OR 97035  
Dan Jones, San Gabriel Area NA, 3917 Inca Ct. NE, Albuquerque, NM 87111  
Carol Driscoll, San Gabriel Area NA, 10209 San Gabriel Rd. NE, Albuquerque, NM 87111  
Deanna Chavez, Cielito Lindo NA, 10700 Nelle Ave. NE, Albuquerque, NM 87111  
Patricia Duda, Cielito Lindo NA, 3720 Camino Capistrano NE, Albuquerque, NM 87111  
Don Couchman, Dist. 8 Coalition of NAs, 6441 Concordia NE, Albuquerque, NM 87111  
Janet Butts, District 8 Coalition of NAs, 9200 Galaxia Way NE, Albuquerque, NM 87111

## ***CITY OF ALBUQUERQUE AGENCY COMMENTS***

### ***PLANNING DEPARTMENT***

#### ***Zoning Code Services***

#### ***Office of Neighborhood Coordination***

San Gabriel Area NA, Cielito Lindo NA, District 8 Coalition of NAs

#### ***Long Range Planning***

### ***CITY ENGINEER***

#### ***Transportation Development Services***

- No Objection to the request.

#### ***Traffic Engineering Operations***

### ***New Mexico Department of Transportation (NMDOT):***

- NMDOT has no comments.

#### ***Hydrology***

- No comments.

### ***DEPARTMENT of MUNICIPAL DEVELOPMENT***

#### ***Street Maintenance***

#### ***Transportation Planning***

### ***WATER UTILITY AUTHORITY***

#### ***Utility Services***

### ***ENVIRONMENTAL HEALTH DEPARTMENT***

#### ***Air Quality Division***

#### ***Environmental Services Division***

### ***PARKS AND RECREATION***

#### ***Planning and Design***

Parks and Recreation Department has reviewed and has no adverse comments for this request.

#### ***Open Space Division***

OSD has reviewed and has no adverse comments.

City Forester

**POLICE DEPARTMENT/Planning**

**SOLID WASTE MANAGEMENT DEPARTMENT**

Refuse Division

**FIRE DEPARTMENT/Planning**

**TRANSIT DEPARTMENT**

<b>Project # 1010626</b> <b>15EPC-40055 SITE DEVELOPMENT</b> <b>PLAN WAVIER – WIRELESS</b> <b>TELECOMMUNICATION FACILITY</b>  FOR ALL OR PORTION OF LOT P-1, REPLAT OF TRACT P, LA REINA DE LAS ALTOS, UNIT 2, ZONED C-1, LOCATED ON MORRIS AND COMANCHE NE, CONTAINING APPROXIMATELY 0.5125 ACRES(S). (G-21)	Adjacent and nearby routes	Route #13, Comanche Commuter Route, pass the site on Comanche.
	Adjacent bus stops	There is an existing bus stop adjacent to the property, 64' east from the northwest corner of the property, serving the above-mentioned route in the eastbound direction.
	Site plan requirements	None
	Large site TDM suggestions	None.
	Other information	None

**COMMENTS FROM OTHER AGENCIES**

**BERNALILLO COUNTY**

**ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY**

Reviewed, no comment.

**ALBUQUERQUE PUBLIC SCHOOLS**

<b>Project #1010626</b> <b>15EPC-40055 SITE</b> <b>DEVELOPMENT PLAN</b> <b>WAVIER-WIRELESS</b> <b>TELECOMMUNICATION</b> <b>FACILITY</b>	<b>La Riena de la Altos Unit 2</b> , Lot P-1 is located on Morrie NE and Comanche NE. The owner of the above property requests approval of a Site Development Plan for a wireless telecommunications facility consisting of a 49' tall concealed monopole structure placed within a 23' x 18'6" lease area along with ground equipment placed within a proposed masonry wall compound. This request will have no adverse impacts to the APS district.
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**MID-REGION COUNCIL OF GOVERNMENTS**

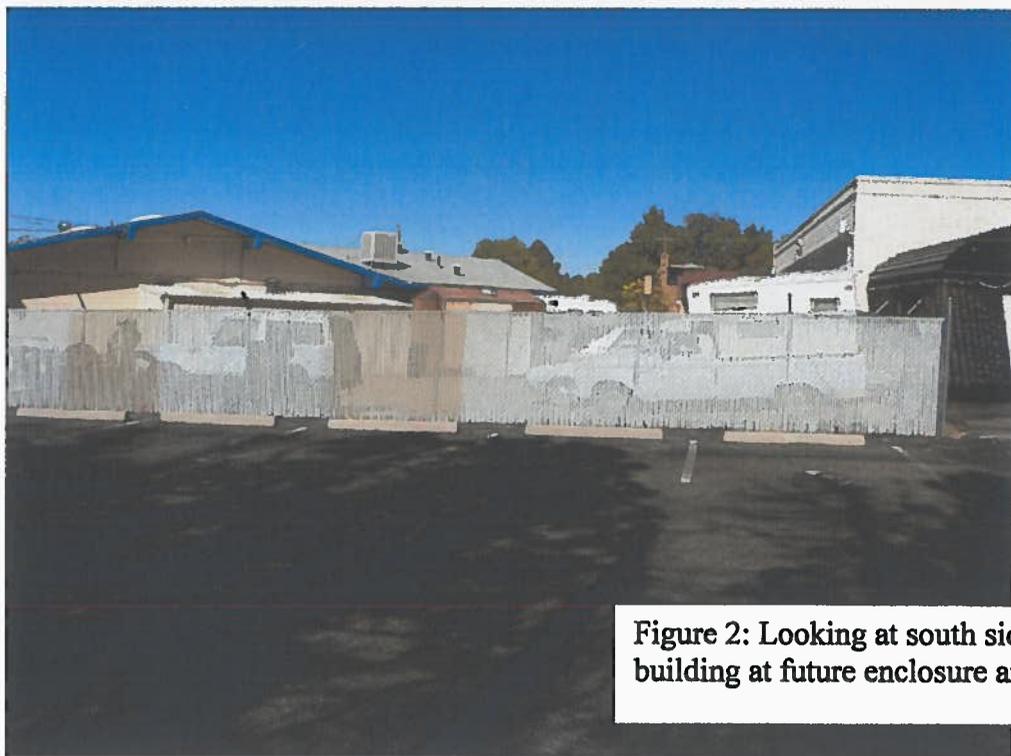
MRMPO has no adverse comments.

**MIDDLE RIO GRANDE CONSERVANCY DISTRICT**

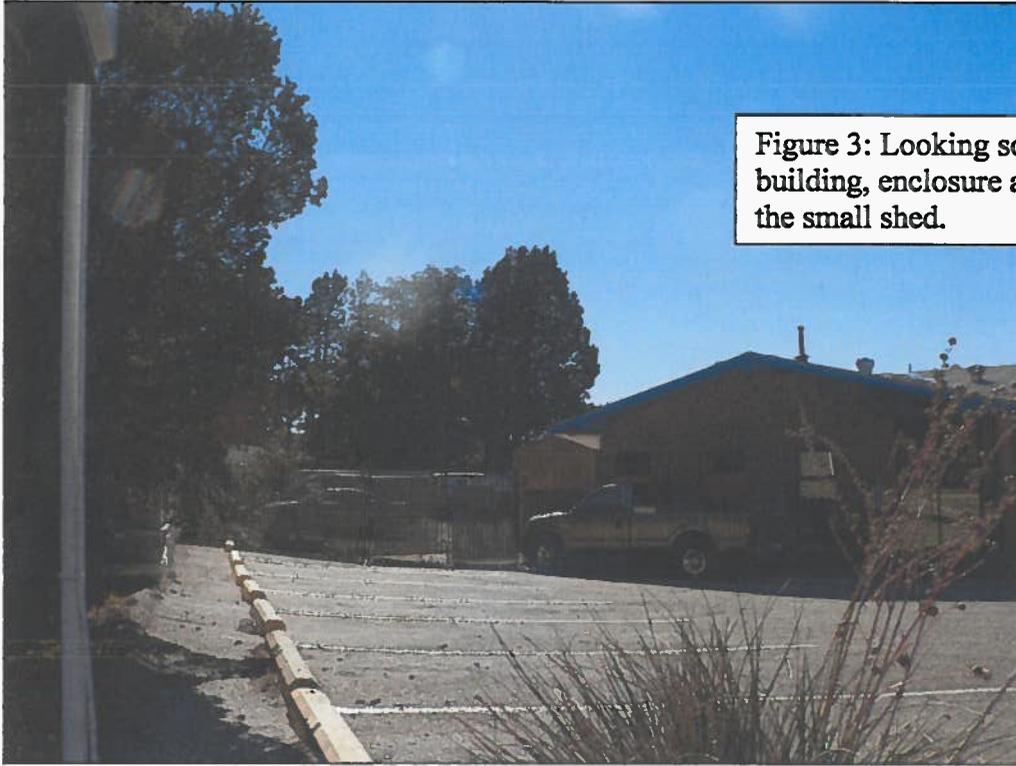
**PUBLIC SERVICE COMPANY OF NEW MEXICO**



**Figure 1: Looking east towards existing building and future enclosure area.**



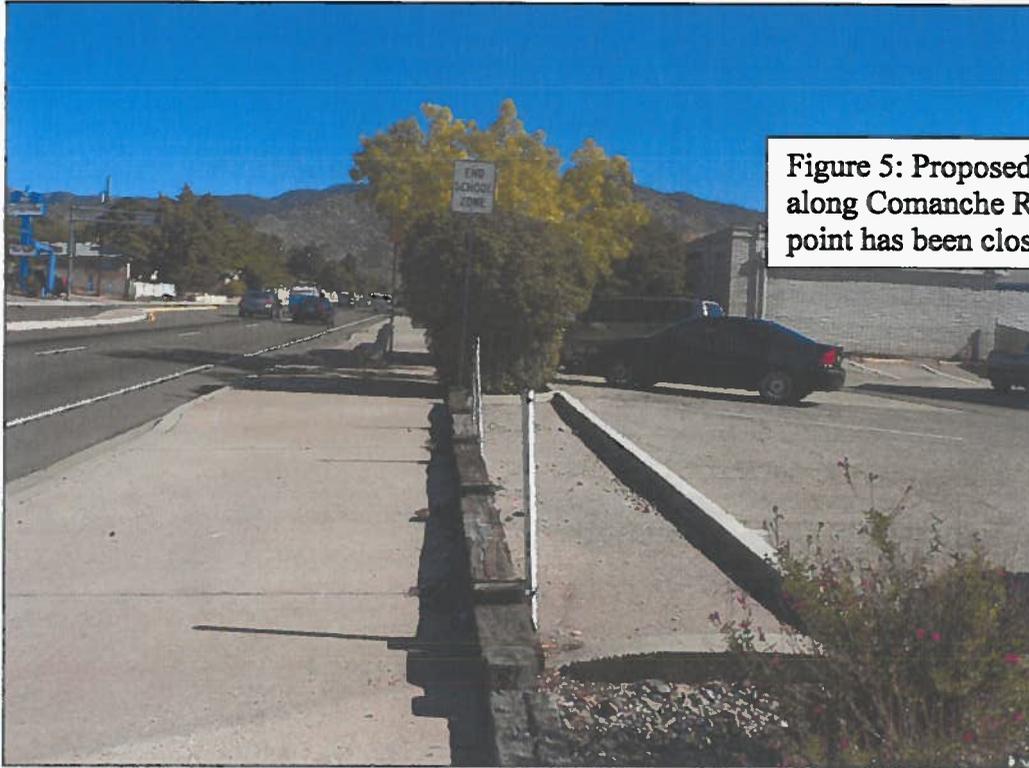
**Figure 2: Looking at south side of building at future enclosure area.**



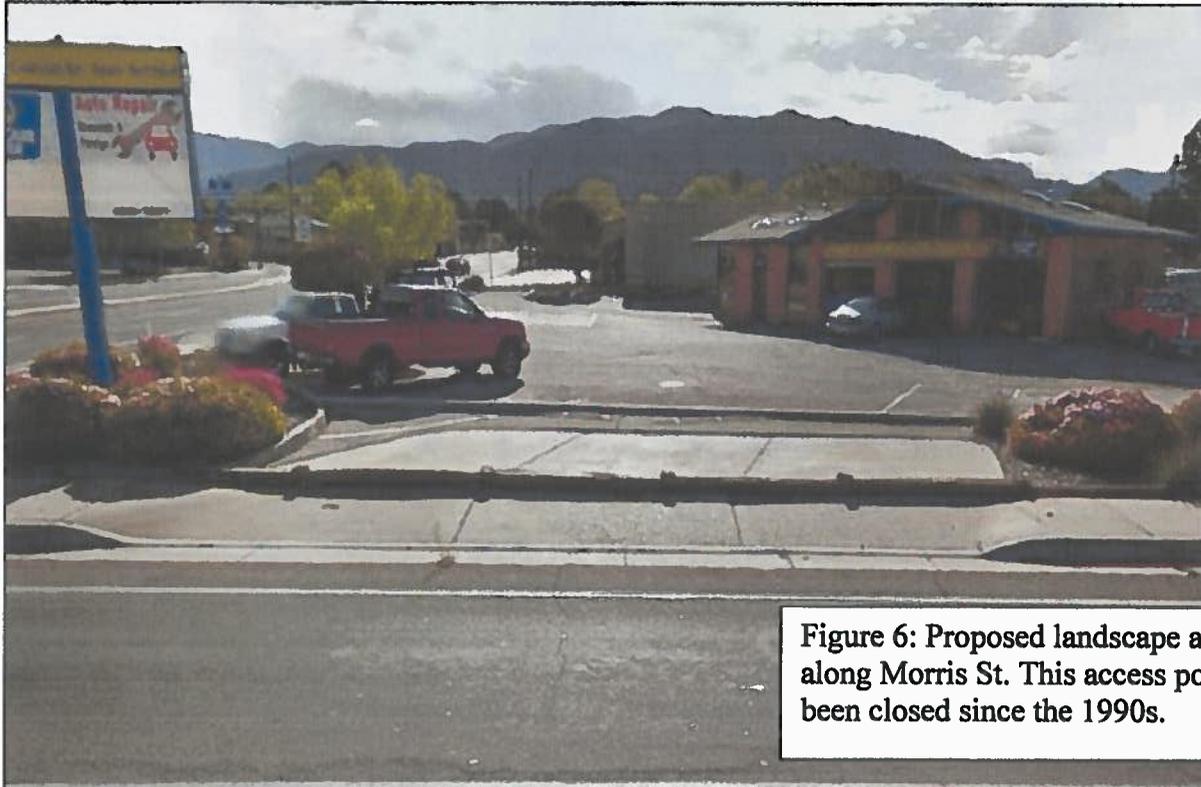
**Figure 3: Looking southwest at existing building, enclosure area will be to the left of the small shed.**



**Figure 4: Looking southeast toward entrance to existing building.**



**Figure 5: Proposed landscape area along Comanche Road. This access point has been closed since the 1990s.**



**Figure 6: Proposed landscape area along Morris St. This access point has been closed since the 1990s.**

Photo by agent

## ZONING

Please refer to the Zoning Code for specifics of  
The C-1 zone

**§ 14-16-1-3 INTENT.**

- (A) This article is intended to help achieve Article IX of the Charter of the City of Albuquerque and the city's master plan; in particular the master plan documents which comprise the Albuquerque/Bernalillo County Comprehensive Plan. This article is intended to create orderly, harmonious, and economically sound development in order to promote the health, safety, convenience, and general welfare of the citizens of the city. These regulations are necessary to provide adequate open spaces for light and air including solar access; to avoid undue concentration of population, to secure safety from fire, panic, and other dangers; to help control congestion in the streets and public ways; to control and abate unsightly use of buildings or land; to facilitate adequate provisions for community utilities and facilities such as transportation, water, sewer, schools, and parks; to encourage the most appropriate use of land; to properly channel flood water runoff; to conserve and stabilize the value of property; and to enhance the appearance of the landscape.
- (B) Any use not designated a permissive or conditional use in a zone is specifically prohibited from that zone, except as otherwise provided herein.
- (C) Approval of a zone or a plan which is required pursuant to a zone does not commit the city to provide water or sewer service more rapidly than is programmed by the city.

('74 Code, § 7-14-2) (Ord. 80-1975; Am. Ord. 62-1980)

**§ 14-16-1-4 INTERPRETATION.**

- (A) **General.** The provisions of this article shall be held to be minimum requirements to meet the intent expressed in § 14-16-1-3. Where the provisions of this article impose greater restrictions than those of any other ordinance or resolution the provisions of this article shall prevail. Where the provisions of any other ordinance, resolution, or covenant impose greater restrictions than those of this article, the provisions of such other ordinance, resolution, or covenant shall prevail.
- (B) **Uses within Structures.** Unless a different intent is indicated herein or in an adopted city plan, uses allowed under the terms of this article shall be understood to be allowed within structures only if they are constructed according to the city Building Code and other technical codes adopted in § 14-1-3, as of the date of the structure's construction.
- (C) Public utility structures, as herein defined, are regulated by this Zoning Code. Other public utility installations located in public rights of way or utility easements, including but not limited to lines and poles, are not regulated by the Zoning Code; however, such installations are controlled by the city if it is the utility or if it has governing adopted plans.

('74 Code, § 7-14-4) (Ord. 80-1975; Am. Ord. 80-1986; Am. Ord. 47-1990)

**CITY of ALBUQUERQUE  
TWENTY-FIRST COUNCIL**

COUNCIL BILL NO. F/S O-14-7

ENACTMENT NO. 0.2014.024

SPONSORED BY: Don Harris and Brad Winter

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**ORDINANCE**

**AMENDING THE WIRELESS TELECOMMUNICATION REGULATIONS AND RELATED DEFINITIONS IN THE ZONING CODE.**

**BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:**

**SECTION 1. SECTION 14-16-1-5, THE DEFINITIONS SECTION OF THE ZONING CODE IS AMENDED TO DELETE THE DEFINITIONS FOR "READILY VISIBLE WIRELESS TELECOMMUNICATIONS FACILITY", "WIRELESS TELECOMMUNICATIONS EQUIPMENT BUILDING OR CABINET", AND "WIRELESS TELECOMMUNICATION EQUIPMENT LEASABLE AREA", AND TO ADD OR AMEND DEFINITIONS AS FOLLOWS:**

**"COLLOCATION. The location of more than one wireless telecommunications facility at a single location, and utilizing the same structure for mounting of wireless telecommunications antenna, by more than one provider of wireless telecommunication services.**

**COLLOCATION, PUBLIC UTILITY (a "Public Utility Collocation"). The location of one or more wireless telecommunication antenna on a public utility structure, including transmission or sub-transmission structures.**

**CONCEALED WIRELESS TELECOMMUNICATIONS FACILITY. As further prescribed in Section 14-16-3-17(E), a wireless telecommunications facility which is aesthetically integrated or otherwise consistent with surrounding buildings, structures, and landscaping, including height, color, style, massing, placement, design, and shape, and which does not visually stand out as a wireless telecommunications facility.**

**FREE-STANDING WIRELESS TELECOMMUNICATIONS FACILITY. A wireless telecommunications facility, other than a public utility collocation, that**

1 consists of a stand-alone support structure, antenna(s), and associated  
2 equipment. The support structure may be a wooden pole, steel monopole,  
3 lattice tower, or similar structure.

4 **STRUCTURE, PUBLIC UTILITY (a "Public Utility Structure").** A structure,  
5 owned by a unit of government or by a public utility company, which is an  
6 electric switching station; electric substation operating at voltages greater  
7 than 50 kilovolts (kV); gas transfer station or border station; lift station, odor  
8 control (or chlorine) station, water well or pump station, or water reservoir;  
9 streetlight or traffic signal structure; or any other public utility structure  
10 controlled by a rank two facility plan."

11 **SECTION 2. SECTION 14-16-3-17 IS HEREBY AMENDED AS FOLLOWS:**

12 **"§ 14-16-3-17 WIRELESS TELECOMMUNICATIONS REGULATIONS.**

13 **(A) Applicability.** Every wireless telecommunications facility located  
14 within the city limits, whether upon private or public lands, is subject to this  
15 section, except that the following facilities are exempt:

16 **(1) Amateur Radio Station Operator/Receive-Only Antenna** If owned  
17 and operated by a federally licensed amateur radio station operator or used  
18 exclusively for a receive-only antenna;

19 **(2) Any existing tower and antenna** provided a valid building permit  
20 was issued for the tower or antenna prior to adoption of this section;

21 **(3) Emergency Services.** Wireless telecommunications facilities  
22 used exclusively for emergency services including police, fire, and operation  
23 of the water utility; and

24 **(4) Any antenna used for AM, FM or TV broadcasting.**

25 **(B) General Provisions.** The following regulations apply to all wireless  
26 telecommunications facilities in all zones, unless otherwise stated.

27 **(1) Setbacks and Separation:**

28 **(a) A free-standing wireless telecommunications facility shall be**  
29 **set back a minimum of 100 feet from the property line of a residential zone.**

30 **(b) New free-standing wireless telecommunications facilities in**  
31 **public utility substations shall be exempt from the setback requirement if the**  
32 **wireless telecommunications tower is no taller than the existing utility**  
33 **structure within 20 feet of said substation.**

- 1           **(c) A free-standing wireless telecommunications facility shall be**  
2 **set back a minimum of 50 feet from the existing right of way.**
- 3           **(d) Except as stated in (a), (b) and (c) above, setbacks shall**  
4 **conform with the setback requirements of the zone in which the wireless**  
5 **telecommunications facility is located.**
- 6           **(e) Free-standing wireless telecommunications facilities shall be**  
7 **separated by at least 1,000 feet, as measured from the wall or fence of each**  
8 **free-standing wireless telecommunications facility.**
- 9           **(2) Lighting and Signage:**
- 10           **(a) Only security lighting or lighting required by a state and/or**  
11 **federal agency is allowed, provided:**
- 12           **(i) The location of the lighting fixture together with its cut-off**  
13 **angle shall be such that it does not shine directly on any public right-of-way or**  
14 **any residential premises.**
- 15           **(ii) The lighting shall not have an off-site luminance greater**  
16 **than 1,000 footlamberts; it shall not have an off-site luminance greater than**  
17 **200 footlamberts measured from any private property in a residential zone.**
- 18           **(b) The only signage that is permitted is that which is required by**  
19 **state or federal law.**
- 20           **(3) Abandonment: All wireless telecommunications facilities which**  
21 **are not in use for three consecutive months shall be removed by the wireless**  
22 **telecommunications facility owner. This removal shall take place within three**  
23 **months of the end of such three month period. Upon removal, the site shall be**  
24 **revegetated to blend with the existing surrounding vegetation. If there is no**  
25 **vegetation on a wireless telecommunications facility site, the site shall be**  
26 **returned to its preconstruction condition. The facility owner shall notify the**  
27 **city when removal of the facility occurs.**
- 28           **(4) Interference: Every wireless telecommunications facility shall**  
29 **meet the regulations of the Federal Communications Commission, or any**  
30 **successor thereof, regarding physical and electromagnetic interference.**
- 31           **(5) Health Issues: Every wireless telecommunications facility shall**  
32 **meet health and safety standards for electromagnetic field emissions as**

1 established by the Federal Communications Commission or any successor  
2 thereof, and any other federal or state agency.

3 (6) View corridors: Only collocations, public utility collocations,  
4 and architecturally integrated wireless telecommunications facilities are  
5 permitted within 1/8 mile from the outer edge of the right-of-way of any flood  
6 control arroyo designated by the city or the Albuquerque Metropolitan Arroyo  
7 Flood Control Authority and identified as part of an existing or future trail  
8 system by the city, or the following streets: Alameda Boulevard, Griegos  
9 Road, Coors Boulevard, Central Avenue, Unser Boulevard, Sunport Boulevard,  
10 Paseo del Norte, Rio Grande Boulevard, Tramway Boulevard, Interstate 25 and  
11 Interstate 40.

12 (7) Open Space: Only collocations, public utility collocations, and  
13 architecturally integrated wireless telecommunications facilities are permitted  
14 within 1/4 mile from the property line of any city- owned or operated major  
15 public open space and the Petroglyph National Monument.

16 (8) Historic Overlay Zones and Registered Historic Properties:

17 (a) Only architecturally integrated wireless telecommunications  
18 facilities are permitted within any designated Historic Overlay Zone.

19 (b) Wireless telecommunications facilities are strictly prohibited  
20 in the H-1 zone.

21 (c) Only architecturally integrated wireless telecommunications  
22 facilities are permitted on properties listed on the State Register of Cultural  
23 Properties or the Federal Register of Historic Places.

24 (C) Collocation & Public Utility Collocation:

25 (1) Collocations and public utility collocations are encouraged.  
26 Such collocations or public utility collocations are not subject to the  
27 concealment requirements prescribed by subsection 14-16-3-17(E) below, but  
28 shall be done in the least visibly intrusive manner, to blend in with the existing  
29 structure and its surroundings. Notwithstanding the foregoing, collocation on  
30 a concealed wireless telecommunications facility shall maintain the concealed  
31 nature of the facility.

32 (2) No new free-standing wireless telecommunications facility shall  
33 be permitted unless the Planning Director or designee determines, upon the

1 applicant's demonstration, that no existing tower, structure or public utility  
2 structure can be used in lieu of new construction to accommodate the  
3 applicant's proposed wireless telecommunications facility. Evidence which  
4 demonstrates that collocation or public utility collocation cannot be used in  
5 lieu of new construction to reasonably accommodate the proposed wireless  
6 telecommunications facility shall consist of an affidavit with supporting  
7 exhibits submitted by the applicant addressing the following:

8 (a) That no existing tower, structure, or public utility structure  
9 within a 1/2 mile radius meets the minimum engineering requirements and/or  
10 lacks available space to support the proposed wireless telecommunications  
11 facility;

12 (b) That collocation or public utility collocation of the proposed  
13 wireless telecommunications facility would cause unavoidable  
14 electromagnetic interference with the antenna(s) on the existing towers,  
15 structures or public utility structures, or the antenna(s) on the existing towers,  
16 structures or public utility structures would cause interference with the  
17 applicant's proposed telecommunications facility;

18 (c) That there are other limiting factors that render existing  
19 towers, structures, or public utility structures within the 1/2 mile radius  
20 unsuitable; or

21 (d) That the owners of existing towers, structures, or public  
22 utility structures within the 1/2 mile radius will not allow the applicant to place  
23 its wireless telecommunications facility thereon, or such owners are requiring  
24 payments thereof that substantially exceed commercially reasonable rates.

25 (3) Unless otherwise specified in this Zoning Code, Public Utility  
26 Collocations are permitted in all zoning districts except the H-1 Historic Old  
27 Town Zone.

28 (4) When mounted on a transmission or sub-transmission line  
29 structure, the equipment cabinet(s) shall be not more than 3 feet x 4 feet x 18  
30 inches deep, at a minimum height of 10 feet, and a maximum height of 20 feet;  
31 and

32 (D) Application Requirements:

1                   **(1) Applications for Free-Standing Wireless Telecommunications**  
2 **Facilities and Architecturally Integrated Wireless Telecommunications**  
3 **Facilities. In addition to any information otherwise required by the**  
4 **Comprehensive City Zoning Code, each applicant for a new free-standing or**  
5 **architecturally integrated wireless telecommunications facility shall provide**  
6 **the Planning Department with:**

7                   **(a) A map of all existing wireless telecommunications facilities,**  
8 **operated by any carrier, within a ½ mile radius of the site;**

9                   **(b) The zone map(s) specific to the application, from the city's**  
10 **Zone Atlas, drawn to scale, showing land uses and zoning designations,**  
11 **including those outside the city limits;**

12                   **(c) Evidence that demonstrates the absence of collocation**  
13 **possibilities as prescribed by subsection 14-16-3-17(C)(2), above;**

14                   **(d) A set of site development plans which, in addition to other**  
15 **requirements in this Zoning Code:**

16                   **(i) Includes a scaled site development plan clearly indicating**  
17 **the location, type, color and height of any proposed wireless**  
18 **telecommunications facility, on-site land uses and zoning, adjacent land uses**  
19 **and zoning (including when adjacent to other jurisdictions), Comprehensive**  
20 **Plan classification of the site, adjacent roadways, proposed means of access,**  
21 **setbacks from property lines, elevation drawings of any wireless**  
22 **telecommunications facility, topography, parking and other information**  
23 **deemed necessary by the Planning Department to assess compliance with this**  
24 **section;**

25                   **(ii) Describes the facility's capacity, including a notarized**  
26 **statement from the applicant which declares the number and type(s) of**  
27 **antenna(s) that it can accommodate, or an explanation why the facility cannot**  
28 **be designed to accommodate other users;**

29                   **(iii) Includes an affidavit explaining what the engineering**  
30 **requirements are and the factual basis for those requirements;**

31                   **(iv) Includes an engineer's or architect's stamp and**  
32 **registration number;**

- 1                   (v) Includes the separation distance between any tower and  
2 other telecommunications facilities and the owner of those facilities; and
- 3                   (vi) Includes any other information as requested by the  
4 Planning Department reasonably needed to evaluate the request;
- 5                   (e) Unless the applicant has demonstrated that the free-standing  
6 or architecturally integrated wireless telecommunications facility cannot be  
7 designed to accommodate future collocations by other users, a letter of intent  
8 committing the wireless telecommunications facility owner and his/her/its  
9 successors and assigns to allowing shared use of the facility if an additional  
10 service provider agrees in writing to meet reasonable terms and conditions of  
11 shared use;
- 12                  (f) Evidence that the applicant mailed notice by registered or  
13 certified mail return receipt requested of the proposed free-standing or  
14 architecturally integrated wireless telecommunications facility to adjacent  
15 property owners that would be entitled to notice of a zone map amendment  
16 and to recognized neighborhood associations within a 1/4 mile radius. The  
17 applicant shall also submit a copy of the notice with its application. In  
18 addition to all other relevant information, the notice must include the  
19 applicant's contact information and the contact information for the relevant  
20 City staff or department where more information may be requested, and must  
21 further indicate that the property owner may request to be notified in writing  
22 upon the Planning Department's decision on the application. When requested  
23 by any person or neighborhood association entitled to notice under this  
24 subsection, the wireless telecommunications facility owner or agent shall  
25 meet with those persons or association representatives to provide a selection  
26 of alternative concealed facility designs deemed both technically feasible and  
27 aesthetically non-intrusive, seeking to reach a mutual agreement concerning  
28 the most acceptable design. The Applicant shall notify those persons who  
29 specifically requested the meeting and all neighborhood associations entitled  
30 to notice under this subsection of the time and location of the meeting.
- 31                  (2) Applications for Collocations, Public Utility Collocations, and  
32 Upgrades to Existing Facilities.

1                   (a) In addition to any information otherwise required by the  
2 Comprehensive City Zoning Code, each applicant for a collocation, public  
3 utility collocation, or upgrade as described by § 14-16-3-17(D)(3) not resulting  
4 in a substantial change, shall provide the Planning Department with:

5                   (i) Documentation establishing that the installer has  
6 permission from the structure owner and property owner, if not the same, to  
7 install the wireless telecommunications antenna(s) and any associated  
8 buildings, cabinets or equipment at the site;

9                   (ii) The zone map(s) specific to the application, from the city's  
10 Zone Atlas;

11                  (iii) A set of site development plans with an engineer's or  
12 architect's stamp and registration number which, in addition to other  
13 requirements in this Zoning Code includes a scaled site development plan  
14 clearly indicating the location, type, and height of the existing wireless  
15 telecommunications facility and the proposed wireless telecommunications  
16 facility, adjacent roadways, and elevation drawings of the wireless  
17 telecommunications facility as existing and as proposed;

18                  (iv) A signed statement from the public utility or owner of the  
19 tower certifying the dimensions of the tower as originally installed or  
20 permitted, inclusive of any modifications that were approved prior to February  
21 22, 2012 (date of the Spectrum Act);

22                  (v) An affidavit explaining the engineering requirements and the  
23 factual basis for those requirements; and

24                  (vi) Any other information requested by the Planning  
25 Department reasonably needed to evaluate the request.

26                  (b) If the proposed collocation, public utility collocation, or  
27 upgrade will result in a substantial change to the existing wireless  
28 telecommunications facility or public utility structure as described by  
29 subsection 14-16-3-17(D)(3) it shall be permitted only upon the applicant's  
30 receipt of a waiver pursuant to § 14-16-3-17(G). If such a waiver is required, the  
31 application will be deemed incomplete until such time as the waiver is  
32 approved.

1           (c) The Planning Director or designee shall review applications  
2 for the proposed collocations or public utility collocations. Applications for  
3 collocations meeting the relevant requirements of this § 14-16-3-17 and not  
4 resulting in a substantial change shall be approved. The Director's decision is  
5 subject to appeal pursuant to the appeal provisions of the Zoning Code.

6           (3) Upgrade; Substantial Change.

7           (a) For purposes of this section, an "upgrade" is the  
8 replacement, or addition of wireless telecommunications antenna(s) or  
9 equipment, but does not include routine maintenance.

10          (b) For purposes of this section, a "substantial change" to a  
11 wireless telecommunications facility or public utility structure includes any  
12 upgrade or physical alteration to an existing public utility structure or existing  
13 wireless telecommunications facility that meets any of the following criteria:

14           (i) For wireless telecommunications towers other than  
15 wireless telecommunications towers in the public right-of-way, it increases the  
16 height of the wireless telecommunications tower by more than 10% or by the  
17 height of one additional antenna array with separation from the nearest  
18 existing antenna not to exceed twenty feet, whichever is greater; for wireless  
19 telecommunications facilities in the public-right-of way or for public utility  
20 structures, it increases the height of the structure by more than 10% or ten  
21 feet, whichever is greater;

22           (A) Changes in height are to be measured from the  
23 dimension of the tower as originally installed or permitted, inclusive of any  
24 modifications that were approved prior to February 22, 2012.

25           (ii) For wireless telecommunications towers other than  
26 wireless telecommunications towers in the public right-of-way, it involves  
27 adding an appurtenance to the body of the tower that would protrude from the  
28 edge of the tower more than twenty feet, or more than the width of the tower  
29 structure at the level of the appurtenance, whichever is greater; for wireless  
30 telecommunications facilities in the public-right-of way or for public utility  
31 structures, it involves adding an appurtenance to the body of the structure  
32 that would protrude from the edge of the structure by more than six feet;

- 1                   **(iii) For wireless telecommunications facilities other than**  
2 **wireless telecommunications facilities in the public right-of-way, it would**  
3 **increase the number of equipment cabinets beyond a maximum of four; for**  
4 **wireless telecommunications facilities in the public-right-of way or for public**  
5 **utility structures, it involves the installation of any new equipment cabinets on**  
6 **the ground if there are no pre-existing ground cabinets associated with the**  
7 **structure, or involves installation of ground cabinets that are more than 10%**  
8 **larger in height or overall volume than any other ground cabinets associated**  
9 **with the structure;**
- 10                   **(iv) It entails excavation or deployment beyond the current**  
11 **site;**
- 12                   **(v) It would defeat the concealment requirements of**  
13 **subsection 14-16-3-17; or**
- 14                   **(vi) It does not comply with the conditions associated with the**  
15 **siting approval of the construction or modification of the eligible support**  
16 **structure or base station equipment, provided however that this limitation**  
17 **does not apply to any modification that is non-compliant only in a manner that**  
18 **would not exceed the thresholds identified in the above subsections (i)**  
19 **through (iv).**
- 20                   **(E) Concealment:**
- 21                   **(1) All proposed wireless telecommunications facilities, excluding**  
22 **collocations, public utility collocations, and upgrades that do not result in a**  
23 **substantial change shall use concealed technology and shall be:**
- 24                   **(a) The least visually and physically intrusive as possible and**  
25 **have the least adverse visual effect on the environment and its character, on**  
26 **existing vegetation, and on the residences in the area of the wireless**  
27 **telecommunications facility;**
- 28                   **(b) Aesthetically integrated with existing buildings, structures,**  
29 **and landscaping, to blend in with the nature and character of the built and**  
30 **natural environment and take into consideration height, color, style, massing,**  
31 **placement, design, and shape;**

1           (c) Located to avoid a dominant silhouette of a wireless  
2 telecommunications facility on escarpments and mesas, and to preserve  
3 designated view corridors; and

4           (d) To the extent feasible without impacting functionality, located  
5 in areas where the existing topography, vegetation, buildings, or other  
6 structures provide the greatest amount of screening, and sited so as to not  
7 stand out of the landscape as a wireless telecommunications facility.

8           (2) Consistent with federal law, these concealment requirements  
9 shall not be administered so as to have the effect of prohibiting the provision  
10 of wireless telecommunication services.

11           (3) The Planning Director or his/her designee shall determine  
12 whether the requirements prescribed by this subsection are sufficiently  
13 satisfied subject to review pursuant to the appeal provisions of the Zoning  
14 Code.

15           (F) Landscaping and Screening:

16           (1) All free-standing wireless telecommunications facilities shall  
17 include landscaping planted and maintained according to a Landscaping Plan  
18 approved by the Planning Director or his/her designee; however, the Planning  
19 Commission may waive this requirement where the Planning Commission  
20 finds this requirement is not useful to achieving the intent of this Zoning  
21 Code.

22           (2) All free-standing wireless telecommunications facilities shall be  
23 surrounded by solid fence or wall, at least six feet high and not more than nine  
24 feet high and landscaping at least sufficient to screen ground equipment  
25 facilities from public view. Chain link with slats shall not constitute a solid  
26 fence or wall.

27           (G) Waiver:

28           (1) The Planning Commission, after a public hearing noticed as  
29 required for a special exception, may grant a waiver of those requirements  
30 over which the Planning Commission has review authority except for allowed  
31 maximum height. A waiver shall be granted only if the Planning Commission  
32 finds in writing that the waiver substantially:

33           (a) Is in the best interest of the community as a whole;

- 1                   (b) Will expedite the approval of an antenna, tower, or tower  
2 alternative;
- 3                   (c) Will not jeopardize public health, safety and welfare;
- 4                   (d) Will either ameliorate the adverse impacts of antenna and  
5 tower proliferation or the adverse impact of requiring new construction of  
6 towers or antenna(s); and
- 7                   (e) Will better serve the purposes of this section.
- 8                   (2) The facts to be considered by the Planning Commission in  
9 reviewing an application for a waiver shall include:
- 10                   (a) The height of the proposed tower;
- 11                   (b) The proximity of the tower antenna to residential structures  
12 and residential district boundaries;
- 13                   (c) The nature of uses on adjacent and nearby properties;
- 14                   (d) The surrounding topography;
- 15                   (e) The surrounding vegetation and foliage;
- 16                   (f) The design of the tower or antenna, with particular reference  
17 to design characteristics that have the effect of reducing or eliminating any  
18 visual obtrusiveness;
- 19                   (g) The proposed ingress and egress;
- 20                   (h) The availability of suitable existing towers or other  
21 structures; and
- 22                   (i) Such other factors as may be relevant.
- 23                   (H) Fees. The Mayor shall set a fee of \$3,000 per application for a  
24 proposed wireless telecommunications facility to cover reasonable  
25 administrative expenses based on approximate city costs incidental to the  
26 processing of applications for siting wireless telecommunications facilities.  
27 The fee for an application for a collocation shall be \$2,000. Such fees may be  
28 increased every two years based on Consumer Price Index (CPI) increases.
- 29                   (I) Review Time. The administrative review time shall not exceed 60  
30 days for a complete application. If a notice of deficiency is sent to the  
31 applicant, the application is not complete until such deficiency is corrected to  
32 the satisfaction of the Director. If the deficiencies are not corrected within 60

1 days of notice of the deficiencies the application shall be deemed withdrawn  
2 and no further action will be taken on it.

3 **SECTION 3. SEVERABILITY CLAUSE.** If any section, paragraph,  
4 sentence, clause, word or phrase of this ordinance is for any reason held to be  
5 invalid or unenforceable by any court of competent jurisdiction, such decision  
6 shall not affect the validity of the remaining provisions of this ordinance. The  
7 Council hereby declares that it would have passed this ordinance and each  
8 section, paragraph, sentence, clause, word or phrase thereof irrespective of  
9 any provisions being declared unconstitutional or otherwise invalid.

10 **SECTION 4. COMPILATION.** Sections 1 and 2 of this ordinance shall  
11 amend, be incorporated in and made part of the Revised Ordinances of  
12 Albuquerque, New Mexico, 1994.

13 **SECTION 5. EFFECTIVE DATE.** This ordinance shall take effect five  
14 days after publication by title and general summary.

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1 PASSED AND ADOPTED THIS 1<sup>st</sup> DAY OF December 2014  
2 BY A VOTE OF: 9 FOR 0 AGAINST.

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Rey Garduño, President  
City Council

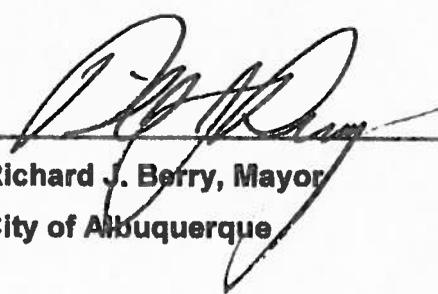
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APPROVED THIS 16<sup>th</sup> DAY OF December, 2014

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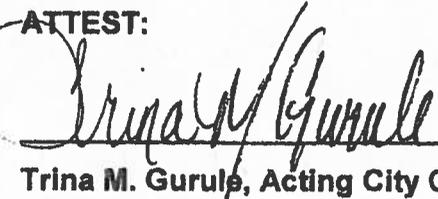
Bill No. F/S O-14-7

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Richard J. Berry, Mayor  
City of Albuquerque

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ATTEST:  
  
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Trina M. Gurule, Acting City Clerk

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