

Spencer Hickman

From: DSD Planning
Sent: Wednesday, October 23, 2024 7:20 AM
To: Spencer Hickman
Subject: FW: Agenda Item #7, 10/30/24 W. Massingale Cell Tower

Follow Up Flag: Follow up
Flag Status: Flagged

Terrill L. Tillman, AICP
Planner III
Pima County Development Services
201 N. Stone Avenue, 1st Floor
Tucson, AZ 85701
520-724-6921

From: Robert Goss <rgoss49@gmail.com>
Sent: Wednesday, October 23, 2024 12:38 AM
To: DSD Planning <DSDPlanning@pima.gov>
Subject: Agenda Item #7, 10/30/24 W. Massingale Cell Tower

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Robert and Shari Goss
9902 W. Rudasill Rd.
Tucson, AZ. 85743
October 22, 2024

Attn: Agenda Item #7, 10/30/24 Planning and Zoning Meeting
West Massingale Road Cell Tower Permit application

We are writing to express our complete opposition to the installation of a 80-foot cell tower at 10510 West Massingale Road.

Aesthetically, this monstrosity would loom over our residential community and destroy the scenic views that all of us in the neighborhood treasure. It would be impossible to enjoy the sight of Panther Peak, Wasson Peak, the majestic Catalinas or the beautiful Sonoran sunsets with this behemoth foisting its 80-foot fake "monoecalyptus" tree into our views. There would be no way to avoid it. Imagine it down the road from your house.

Practically, it is almost certain that the completion of this project would negatively impact the real estate values for hundreds of local homeowners (and *property tax payers*) in the area – and all for some unnecessary quest to make cell phone transmission more robust? I can't speak for others in the area, but we personally are very satisfied with our cell phone reception at this time.

Legitimately, we question how this eyesore could be compatible with the designation of Picture Rocks road as part of the American Automobile Association's "Tucson Mountains Scenic Highway", or the mandate of Saguaro National Park to protect and preserve our natural resources. How could gazing up at a structural steel eucalyptus tree enhance the experience of thousands of tourists and visitors? Please adhere to the Pima County Code §18.07.030H which explicitly prohibits this type of installation!

In summary, we can find no compelling reason to install this cell tower at this location at this time. Please consider the wishes of the residents who actually live in this neighborhood and who value its natural beauty and serenity, rather than abstract notions of progress (and profit).

Thank you all for your time and consideration of our opinions.

Robert and Shari Goss

Spencer Hickman

From: DSD Planning
Sent: Thursday, October 24, 2024 7:30 AM
To: Spencer Hickman
Subject: FW: Request for invite to 10/30/24 hearing, Agenda Item #7

Follow Up Flag: Follow up
Flag Status: Flagged

Terrill L. Tillman, AICP
Planner III
Pima County Development Services
201 N. Stone Avenue, 1st Floor
Tucson, AZ 85701
520-724-6921

From: Ginger Marth <gmarth68@gmail.com>
Sent: Wednesday, October 23, 2024 5:56 PM
To: DSD Planning <DSDPlanning@pima.gov>
Subject: Request for invite to 10/30/24 hearing, Agenda Item #7

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Hello - I would like an invite to the Oct 30th, 2024 meeting for Agenda Item # 7, Case # P24CU00007, 10510 W Massingale Rd, cell tower CUP III permitting case. I am opposed to the permitting of a tower at this location.

Thank you,

Virginia Marth
10040 W Rudasill Rd, Tucson, AZ 85743

Spencer Hickman

From: DSD Planning
Sent: Thursday, October 24, 2024 7:30 AM
To: Spencer Hickman
Subject: FW: Please email me an invite to the Oct 30th meeting for P24CU00007 10510 W Massingale Rd Tower proposal. I am opposed.

Follow Up Flag: Follow up
Flag Status: Flagged

Terrill L. Tillman, AICP

Planner III

Pima County Development Services
201 N. Stone Avenue, 1st Floor
Tucson, AZ 85701
520-724-6921

From: Nancy Musgrave <imaginejnm@gmail.com>
Sent: Wednesday, October 23, 2024 10:07 PM
To: DSD Planning <DSDPlanning@pima.gov>
Subject: Please email me an invite to the Oct 30th meeting for P24CU00007 10510 W Massingale Rd Tower proposal. I am opposed.

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Thank you.

Nancy Musgrave
Picture Rocks

Spencer Hickman

From: DSD Planning
Sent: Thursday, October 24, 2024 7:30 AM
To: Spencer Hickman
Subject: FW: invitation to the Oct 30 meeting

Follow Up Flag: Follow up
Flag Status: Flagged

Terrill L. Tillman, AICP
Planner III
Pima County Development Services
201 N. Stone Avenue, 1st Floor
Tucson, AZ 85701
520-724-6921

From: Lorsieg9 <lorsieg9@aol.com>
Sent: Wednesday, October 23, 2024 4:51 PM
To: DSD Planning <DSDPlanning@pima.gov>
Subject: invitation to the Oct 30 meeting

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I would like an invite to the Oct 30th meeting for P24CU00007 10510 W Massingale Rd Tower proposal. I am opposed.

Thank you,
Lori
Lorsieg9@aol.com

Spencer Hickman

From: DSD Planning
Sent: Thursday, October 24, 2024 1:25 PM
To: Spencer Hickman
Subject: FW: T Mobile tower meeting Oct 30, 2024

Follow Up Flag: Follow up
Flag Status: Flagged

Terrill L. Tillman, AICP

Planner III

Pima County Development Services
201 N. Stone Avenue, 1st Floor
Tucson, AZ 85701
520-724-6921

From: Joseph Liardi <jliardi@hotmail.com>
Sent: Thursday, October 24, 2024 12:06 PM
To: DSD Planning <DSDPlanning@pima.gov>
Subject: T Mobile tower meeting Oct 30, 2024

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Please send me an invite to the
Oct 30 meeting for 10510 w Massingale Rd T Mobile Tower proposal # P24CU00007.

Thank you
Joseph Liardi
jliardi@hotmail.com

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Pima County Planning and Zoning Commission
Development Services Division

October 24, 2024

Re: Agenda item #7, 10/30/2024 hearing, W Massingale Rd. Cell tower case # P24CU00007

Dear Commissioners,

This letter is in opposition to Vertical Bridge building an 80 ft. Tower on this property.

1. Residents report good coverage and there are no gaps in this area.
2. Access to this tower is not on a county maintained road.
3. This is a rural residential area, in violation of Pima County Code 18.07.030H
4. This is the Sonoran Desert. A Eucalyptus Tree is out of place, and an eye sore and towers over everything around it. Nothing is taller than 35 ft.
5. This property intersects with a protected Xero-riparian Wildlife Habitat area.
6. Property values will drop, forcing residents to lose equity in their homes. If they decide to move, with the price of a new home or rising rents, they will become homeless. We need to alleviate homelessness, not create it!!!
7. Several years ago Vertical Bridge used deceptive aerial photos of the property at 6321 N. Bobcat Lane. They tried to put a Tower across the street from me. The majority of homes didn't show up because the photo must have been 30 or 40 years old.
8. This is the most important point I want to make. These Towers are almost obsolete! Star Link is much better!
Most people who live in vehicles and go to remote areas swear by Star Link. Before long we will be able to get a signal anywhere in the world.

Thank you,

Armida Baron
N Bobcat Lane, Tucson, AZ 85743

Spencer Hickman

From: Cassidy Martinez <cassidyvmartinez@gmail.com>
Sent: Sunday, October 27, 2024 7:47 PM
To: DSD Planning
Subject: Tower proposal

You don't often get email from cassidyvmartinez@gmail.com. [Learn why this is important](#)

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I would like an invite to the Oct 30th meeting for P24CU00007 10510 W Massingale Rd Tower proposal. I am opposed

Spencer Hickman

From: anne martinez <acmartinez2000@gmail.com>
Sent: Saturday, October 26, 2024 1:53 PM
To: DSD Planning
Subject: Requesting invite to attend proposal this Wednesday, October 30

You don't often get email from acmartinez2000@gmail.com. [Learn why this is important](#)

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Please send me an invitation to attend T-mobile Tower Proposal scheduled Oct. 30 at 9am on 10510 W Massingale Rd. Tucson AZ 85743
Thank you, Anne Martinez

We already have several towers serving this community and don't want to continue decreasing our property value of our home with another tower that will restrict our views of our mountain and natural environment views!

Spencer Hickman

From: Anthony Martinez <arroyotonymartinez@gmail.com>
Sent: Saturday, October 26, 2024 1:50 PM
To: DSD Planning
Subject: Request to attend meeting

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Please send me a invite to attend meeting scheduled this Wednesday October 30th at 9 AM for T Mobile Tower proposal at 10510 W. Massingale Rd. Tucson, Arizona 85743

I'm against this proposal because of the intrusive views to our environment and the decrease of property value it will bring to this community. There are already several towers within the proximity of our homes that are already serving this community adequately.

Thank you , Anthony Martinez

Spencer Hickman

From: Sue Murphy <smurphy4901@gmail.com>
Sent: Monday, October 28, 2024 6:14 AM
To: DSD Planning
Subject: Request meeting invite

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CAUTION: This message and sender come from outside Pima County. If you did not expect this message, proceed with caution. Verify the sender's identity before performing any action, such as clicking on a link or opening an attachment.

Good morning,

This email is to request an invite to the Oct 30th meeting for P24CU00007 10510 W Massingale Rd Tower proposal. I also want to have it on record that **I do not support this project and am opposed.**

Thank you,
sue murphy

Spencer Hickman

From: PETER HNATH <onebadrhino@comcast.net>
Sent: Friday, October 25, 2024 2:19 PM
To: DSD Planning
Subject: Proposed cell tower at 10510 W. Massingale Rd. (P24CU00007)
Attachments: 5G EFFECTS TO WILDLIFE ALBERT M.docx; doc 2.pdf; Doc1.docx

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CAUTION: This message and sender come from outside Pima County. If you did not expect this message, proceed with caution. Verify the sender's identity before performing any action, such as clicking on a link or opening an attachment.

Dear Pima County Zoning/ Board of Supervisors,

I am writing to express my objection to the proposed cell phone tower by Vertical Bridge/ T-Mobile at 10510 W. Massingale Rd. (P24CU00007) There are many reasons why this site should be denied for this project and I'm sure you will receive numerous complaints from the community that surrounds this property.

My particular point of objection is because of the biological impact it will have on the wildlife that have lived in this area forever. I have degrees in biology and environmental management and have researched the effects of such towers. There is a family of 6 Harris Hawks that have nested in a tree less than 50 yards from the proposed tower site. This area has been their territory for more than 20 years and I have personally watched many generations of hawks grow up and thrive in this area. The effect of these towers can cause nest abandonment, feather lose, increase in fledgling mortality, death by collisions with towers and many other physical injuries.

Harris Hawks are protected under the Migratory Bird Treaty Act and should not be disturbed by this blatant attempt to cram a tower where it is not needed. It is only for financial gains that T-Mobile is proposing this project there is no need for additional service in this area. I have attached research from Albert Manville formerly of the Division of Migratory Bird Mangement and U.S. Fish & Wildlife Service to show the damage that a cell phone tower can cause to local wildlife populations.

Please take this serious issue into consideration before making any decisions on this project.

Sincerely,

Peter T. Hnath
11640 W. Anthony Dr.
Tucson, A.Z.

Albert M. Manville, II, Ph.D., C.W.B.
Principal, Wildlife and Habitat Conservation Solutions, LLC
% 2124 Greenwich St.
Falls Church, VA 22043
albertsandy@verizon.net

Mr. Eric V. Rickerson, State Supervisor
Washington Fish and Wildlife Office
U.S. Fish and Wildlife Service
510 Desmond Dr. SE, Suite 102
Lacey, WA 98503
eric_rickerson@fws.gov

October 16, 2017

[DHH FWS Concurrence Response-AMM Final.docx]

Re: Response on behalf of Dungeness Heights Homeowners (“DHH”) to September 21, 2017, Concurrence Letter 01EWF00-2017-I-1104 (“FWS Concurrence Letter”) from the Washington Fish and Wildlife Office to Dr. Joelle Gehring, Competition and Infrastructure Policy Division, Federal Communications Commission (FCC), pertaining to the Radio Pacific, Inc., cellular and KZQM FM communications tower near Sequim, WA

Dear Supervisor Rickerson:

As you may recall, I was the U.S. Fish and Wildlife Service’s (hereafter FWS or Service) national, agency lead on all things structural that impacted migratory birds, including collisions with communication towers and impacts from the tower radiation on migratory birds and other wildlife. I served in that capacity as agency lead from 1997 to 2014, when I retired from the Service. In 2000 I co-authored the then first version of the *Interim Voluntary Communication Tower Guidelines*, which I revised and authored in 2013 (cited on page 1, paragraph 3 of your letter). Those 2013 guidelines were shared with Dr. Joelle Gehring of the FCC based on the then best available science, and they were shared with industry, individual communication tower companies, the public, and Federal and State authorities, among others. In my role as agency lead, I served: as project officer for 2 tower research lighting/height/guy wire studies performed by Dr. Gehring as the Principal Investigator before she was hired by FCC; as a colleague beginning in 2000 working with Dr. T. Litovitz and his team at Catholic University on impacts of extremely low levels of cell phone radiation on chicken embryos; as a colleague working with renowned radiation expert Dr. H. Lai (Emeritus, Univ. Washington) on non-thermal radiation effects; and as a colleague working with European scientists, especially Dr. A. Balmori and Dr. J. Everaert, documenting impacts of cell towers on wild nesting migratory birds. I also served as Chairman of the Communication Tower Working Group (“CTWG”) whose stakeholders included the FCC, Federal Aviation Administration, FWS, other Federal agencies, all major broadcast and cellular (cell) phone trade associations, individual companies, academicians, consultants, and conservationists, among others. The function of the CTWG was to assess, use and recommend the latest science dealing with avian impacts from tower collisions and radiation. Once retiring from Federal service, I have remained extremely active regarding tower impacts to migratory birds from collisions and radiation.

When I retired, FWS Washington DC HQ Office did not replace my position, especially those components dealing with impacts of cell and other broadcast towers on migratory birds. While that was unfortunate, it provides absolutely no excuse to FWS for failing to recognize and failing to continue to address growing impacts from collisions and radiation on migratory birds. I have documented those scientific issues in considerable published detail in a number of peer-reviewed and refereed papers both while

working for FWS and more recently as a consultant, as previously referenced in our Dungeness Heights Homeowners (DHH) filings to FWS and FCC.

The FCC Staff possibly will rely on this FWS Concurrence Letter as the principal basis for no further requirement for any NEPA review. This is scientifically and legally indefensible, fails to address the many points DHH raised in previous submissions, and does not preclude the need for further NEPA review. Specific concerns include the following:

- This FWS Concurrence Letter is cursory at best, misleading, incorrect in one specific study interpretation, and completely fails to represent most of the ongoing scientific developments as we know and understand them today especially regarding impacts to migratory birds. For example, in your reference to the *2013 USFWS Revised Voluntary Guidelines* (which as the principal author I am quite familiar), you mention that the proposed Radio Pacific tower will be a 150-ft [AGL] tall monopole. This design does indeed follow recommended FWS best practices — i.e., unguied and unlit. However, what is **not** addressed are the likely impacts to Bald Eagles, and other nesting and roosting migratory birds, of the proposed “faux” fiberglass fir tree branches — possibly causing impalement on the sharp fiberglass branches, injury and death to birds which attempt to both use or avoid them at the last minute, not to mention impacts from both thermal and non-thermal radiation from the antennas. Bald Eagles tend to use the tallest objects available for roosting, and roosting will likely occur on the “faux” fiberglass branches since the antennas will extend more than 60 ft above the current tree line. A NEPA review, ideally through a nationwide EIS (or the very least an EA) is strongly recommended. DHH previously raised these collision, impalement and radiation likely environmental impacts to migratory birds and especially to the locally important Bald Eagle population to FWS and FCC before. These issues were brought to the attention of FCC in: DHH 3-17-16 Request for Environmental Review Brief and Appendices; DHH 4-6-16 Reply and Appendices; DHH 4-27-16 Opposition which includes the 4-25-16 Manville Declaration, all in FCC File No. A0985196. Similar documents are filed in FCC File No. BMPH-20150922ACS. The FWS was provided with the relevant materials in those FCC files, plus with additional materials, all emailed in a series of 12 emails first sent on 7-28-16 to Mark Miller of the Washington Fish and Wildlife Office (along with hand delivery of a paper copy) and sent again on 6-19-17 by forwarding the same series of 12 emails to Michael Green and Emily Teachout of the FWS. The FWS Concurrence Letter is an inadequate response to the best available science provided by DHH.
- There are numerous other issues in the *2013 USFWS Revised Voluntary Guidelines* which DHH raised — e.g., build towers in degraded habitats, avoid citing towers near wetlands (several in the immediate area), and implement at least 1-mi minimum distance buffers between active Bald Eagle nests and towers based on previous FWS scientific studies in Wyoming (FWS Portland Office instead argued for a 600-ft Eagle buffer and only during construction of the tower although there currently are several active nests within 1 mile of the proposed tower site — the 600 ft buffer is **not** recommended in the *2013 Guidelines*). Absolutely no mention was made about concerns from the pulsed radio waves that will extend, line-of-sight blanketing the area, from the FM radio antennas affecting especially Bald Eagles and humans. Additionally, no mention is made of the power levels for FM transmission (6,000 Watts for this commercial station), far higher than the UHF antennas, exacerbating effects of thermal heating. Further, no mention is made of thermal heating effects from the FM antenna which will be coupled with the UHFs from the proposed cellular antennas. As we previously stated, this creates a very dangerous frequency potential for Bald Eagles since the length of the FM signal is about 6 ft, creating a full-body resonant effect for both humans and Bald Eagles (wingspans also about 6 ft). The FWS Concurrence Letter does not address these issues.
- Under the Section titled Migratory Birds and Bald Eagles (p. 3 of the FWS Concurrence Letter), FWS mentions precluding “take” under MBTA, “*unless authorized by permit*” but concludes in this paragraph that “*there is no permit available for incidental take.*” However, FWS does acknowledge that

permits for “take of Bald Eagles” are available under 50 CFR 22.26 (“take resulting in mortality” and “take resulting in disturbance”), but fails to mention that the permit process sets allowable levels of take over a certain time period and permit applications are open to public NEPA review and comment. These details were not included in FWS Concurrence Letter failing to provide full disclosure about the facts.

- In the FWS Concurrence Letter on p. 4 (opening paragraph), FWS indicates that “*we reviewed the information supplied by Albert Manville regarding the potential effects to these species from construction of this tower and conclude that negative effects are unlikely.*” Upon what rationale, scientific information, studies and published papers is this conclusion reached? We provided detailed studies on the record quite to the contrary. FWS then states that “*the collision risk by this tower to swans, eagles, and other species, is remote because the proposed tower is a monopole design, precluding need for guy wires.*” Sadly, FWS has cherry-picked here, using only a small portion of the 2013 Guidelines to reach what we feel is a flawed conclusion. Surrounding freshwater wetlands will attract myriad species of migratory birds. Swans have already been documented to fly directly over the proposed tower site. Bald Eagles have been photo-documented using the trees both on and next to the proposed tower site as a roost. (See Manville Report (App. R) Attachments R1 to R3) The tower is to be placed on a hill where the effects of fog, inclement weather, and storms may enhance collision mortality, especially impalement on the “faux” branches. The “noise effect” (Engels et al. 2014, referenced in my Manville 2016 radiation briefing memo provided to FWS) has been documented and shows that migratory birds are unable to use their magnetic compass in the presence of urban electromagnetic noise during movement and migration. How will enhanced microwave and FM signals exacerbate this “noise” effect? This issue was simply not addressed.
- FWS did leave open the door to further NEPA review. “*The body of science examining the effects of radiation emitted by communication towers on animals is growing, and developmental effects on bird embryos have been noted in some lab studies under **high** [note: they actually were conducted under incredibly **low doses** of 0.0001 the amounts of radiation normally emitted from the standard 900 HZ cell phone over 2 hour daily periods] doses; additional studies are needed to evaluate the effects of this radiation on birds in controlled situations in the field, mimicking levels of radiation typically used by industry.*” To clarify, these low dose studies were intended to assess impacts from very low levels of non-thermal non-ionizing radiation. As I stated in my 2016 radiation briefing memo (Manville 2016; “A Briefing Memorandum: What We Know, Can Infer, and Don’t Yet Know about Impacts from Thermal and Non-thermal Non-ionizing Radiation on Birds and Other Wildlife — for Public Release,” 12 pp peer-reviewed), **thermal effects** are generally pretty clear and already have been well documented.
- The FWS Concurrence Letter does not foreclose the need for further NEPA review. For example, 2 of the factors in the implementing regulations for NEPA help determine whether an impact is sufficiently significant to necessitate an EIS (or at least an EA). One includes “*the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risk.*” The other concludes “*the degree to which the effects on the quality of the human environment are likely to be highly controversial*” (40 CFR 1508.27(b)(4) and (5)). The FWS Concurrence Letter essentially concedes (p. 4) that the impacts to Bald Eagles and other birds from radiation emitted from the tower are at least “*highly uncertain*” and entail “*unknown risks.*” Effects are “*highly controversial*” under NEPA when there is a “*substantial dispute*” regarding the nature and extent of the impact. (*Middle Rio Grande Conservancy Dist v Norton*, 294 F.3d 1220, 1229 (10th Cir. 2002)) Clearly a **scientific dispute** which I have raised as has been acknowledged by FWS has been held to be the clearest example of when such controversy exists for purposes of NEPA. The fact that I was invited as the Service’s lead scientist on the collision and radiation issues to provide Enclosure A (Background, and Discussion on Collision Deaths and Categorical Exclusions, and Discussion on Radiation Impacts and Categorical Ex-

clusion) to the letter sent to the National Telecommunications and Information Administration, U.S. Department of Commerce, is telling. The letter (previously provided for the record) was signed on February 7, 2014, by the then Director, Office of Environmental Policy and Compliance, Department of Interior (letters ER 14/0001, ER 14/0004) recommending that NTIA not categorically exclude impacts from non-thermal radiation on migratory birds, and clearly acknowledges that FWS and DOI have already acknowledged the need to address impacts on non-thermal radiation on migratory birds under NEPA.

We respectfully request that FWS re-evaluate its position on NEPA and request that FCC conduct an EIS (or at least an EA) to begin addressing these very troubling issues regarding impacts from radiation and collisions on migratory birds. Respectfully submitted.

Albert M. Manville, II, Ph.D., C.W.B.
Principal, Wildlife and Habitat Conservation Solutions, LLC
Adjunct Professor, Advanced Academic Programs, Krieger School of Arts and Sciences, Johns Hopkins Univ., DC Campus

IW59

Division of Migratory Bird Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive – MBSP-4107
Arlington, VA 22203

January 14, 2011

Mr. Aaron Goldschmidt, Esq.
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comments of the U.S. Fish and Wildlife Service's Division of Migratory Bird Management filed electronically, on WT Docket No. 08-61 and WT Docket No. 03-187, Regarding the Environmental Effects of the Federal Communication Commission's Antenna Structure Registration Program

Dear Mr. Goldschmidt:

The Division of Migratory Bird Management (DMBM), U.S. Fish and Wildlife Service (FWS or Service) is pleased to provide the following comments on the Federal Communication Commission's (FCC or Commission) Antenna Structure Registration Program (ASRP). We had planned to present oral comments before the Commission on December 6, 2010, but at the last minute were unable to attend.

Introductory Comments

The Service appreciates the opportunity to continue working with the FCC, a relationship that was spurred by a large single-night kill of up to 10,000 Lapland Longspurs and other birds at 4 adjacent communication towers and a nearby, lighted outbuilding near Syracuse, Kansas, in February 1998. The relationship with FCC more formally began in 1999 at an avian-communication tower workshop at Cornell University at which the FCC was a presenter, and with the 1999 formation of the Communication Tower Working Group that we currently chair and which the FCC has been an active participant. We look forward to maintaining this collaborative relationship into the future while significantly reducing the "take" (defined as, "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect" without a permit; 50 CFR 10.12) of migratory birds at communication towers.

Statutory and Regulatory Issues Affecting Migratory Birds

5G EFFECTS TO WILDLIFE ALBERT M. MANVILLE, PH.D. CERTIFIED WILDLIFE BIOLOGIST TO THE FCC

Jul 6, 2020



Comments Submitted for the Record Re: 19-226, Studying Impacts of 5G Radiation on Humans Through Safety Testing June 3, 2020 To Whom It May Concern at the Federal Communications Commission

As the Federal agency lead from 1997 to 2014 – when I retired from the Division of Migratory Bird Management, U.S. Fish & Wildlife Service – on all things human

impacting migratory birds, I led my agency by responding to impacts from radiation to migratory birds and other wildlife. This included testimony I presented to the FCC, comments I presented at scientific and technical conferences, comments at meetings with industry groups (e.g., I chaired the Communication Tower Working Group on behalf of USFWS), publication of peer-reviewed scientific papers and a wildlife book chapter, technical comments provided from the Department of Interior to the Department of Commerce on radiation and NEPA, and comments presented on behalf of USFWS in PowerPoints, among others. Now as a private wildlife consultant and part-time adjunct professor for Johns Hopkins University, I also continue to study the impacts of radiation on human health, welfare and safety, including impacts from millimeter-wide radiation frequencies on humans from 5G. The race to implement 5G and the push by FCC to approve the related 5G license frequencies to industry are very troubling and downright dangerous.

As the coauthor of a pending peer-reviewed scientific paper on impacts from non-ionizing radiation on flora and fauna, frankly we still know very little about the safety and other impacts from 5G, although the military has already developed classified technologies (e.g., crowd-dispersing and anti-terrorism devices to break up gathered groups) and done classified studies on impacts from 5G which are not available to the public. Safety testing of the impacts of 5G has clearly been neglected, most certainly by the FCC. There exists an enormous challenge to answer the many questions still in need of further investigation regarding risks, threats and outcomes from using 5G, including impacts to public health and safety. Furthermore, the public deserves a full accounting of 5G before it is fully rolled out and becomes too late to manage – i.e., when the proverbial ‘horse is already out of the barn.’

Rather than categorically exclude 5G communication devices as FCC regularly does with virtually everything it licenses which emits non-thermal, non-ionizing radiation (e.g., cell phones, cell towers, smart-devices, WiFi and its routers, TV/microwave and radio antennas, and the many related technologies) – a process many of us feel is out-of-date and flawed, I strongly recommend the initiation of a detailed and robust scientific study on the impacts of 5G on human health and safety, conducted by an entity(ies) with no vested interest in the study outcomes. The results of such a study(s) must be made available to the public for full and transparent review and comment. Given the concerns raised by the public, scientific community, and related research arms about human safety, such a study effort is incredibly important and very timely. Rather than fight this study recommendation in Federal court, I strongly recommend FCC open up the process to public review and move to conduct the necessary studies to answer these the many troubling questions about the safety impacts of 5G. Let sound science be the primary driver in this effort.

Respectfully submitted, Albert M. Manville, Ph.D., and Certified Wildlife Biologist

Dr. Albert Manville has [written to the FCC](#) on impacts to birds and [higher frequencies to be used in 5G](#) and authored numerous [publications](#) detailing research showing harm to birds. “Now as a private wildlife consultant and part-time adjunct professor for Johns Hopkins University, I also continue to study the impacts of radiation on human health, welfare and safety, including impacts from millimeter-wide radiation frequencies on humans from 5G. The race to implement 5G and the push by FCC to approve the related 5G license frequencies to industry are very troubling and downright dangerous.”

Additional Documentation by Dr. Albert Manville

- Letter to the FDA by [Albert Manville PhD, retired Senior Wildlife Biologist, Division of Migratory Bird Management, U.S. Fish & Wildlife Service, Wash. DC HQ Office \(17 years\); Senior Lecturer, Johns Hopkins University](#)
- [A BRIEFING MEMORANDUM: What We Know, Can Infer, and Don't Yet Know about Impacts from Thermal and Non-thermal Non-ionizing Radiation to Birds and Other Wildlife](#)
- [Manville, A.M., II. 2005. Bird strikes and electrocutions at power lines, communication towers, and wind turbines: state of the art and state of the science – next steps toward mitigation. Bird Conservation Implementation in the Americas: Proceedings 3rd International Partners in Flight Conference 2002, C.J. Ralph and T. D. Rich, Editors. U.S.D.A. Forest Service General Technical Report PSW-GTR-191, Pacific Southwest Research Station, Albany, CA: 1051-1064](#)

13502 N. Sunset Mesa Dr.
Marana, AZ 85658

Dear Planning and Zoning Commission,

When I learned of the Vertical Bridge plan to place an 80 foot cell phone tower in the Picture Rocks neighborhood and close to the Saguaro National Park I was concerned. Research showed how the tower would affect the area and led to the following against the installation.

Picture Rocks Versus Vertical Bridge Cell Phone Tower

Why does Vertical Bridge, in partnership with T-Mobile, have the power to determine the placement of a neighborhood cell phone tower? Where is the power of the residents who have stated unanimously they are in opposition of the tower? This area is their neighborhood and this decision should be theirs.

Reasons for their opposition:

- 1) Have 100 % coverage already
- 2) The 80 foot tower would spire over area homes
- 3) Property values would be reduced
- 4) Blocks views of Panther Peak
- 5) County designated wildlife habitats would be disrupted
- 6) Pima County code would be violated with the proposal of a “camouflage” not allowed at the location
- 7) Road to access the tower is not County maintained and often floods with severe damage
- 8) 3 protected xeroriparian areas would be intersected by the installation site

With these objections Vertical Bridge needs to be denied permission to erect the 80 foot tower.

Sincerely,
Patricia Johnson
bayesnana@gmail.com
608-345-7105

Spencer Hickman

From: Rachel Shoop <r.k.shoop@gmail.com>
Sent: Friday, October 25, 2024 10:10 PM
To: DSD Planning
Subject: Agenda Item #7, 10/30/24 Hearing, W Massingale Rd Cell Tower Case

You don't often get email from r.k.shoop@gmail.com. [Learn why this is important](#)

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Dear Pima County Development Services,

I am writing as a resident of N Bobcat Lane in Picture Rocks regarding the proposed 110 ft. cell tower at 10510 W Massingale Rd, less than 3 miles from my home.

I **strongly oppose** the construction of the cell tower on W Massingale Rd in Picture Rocks for several reasons:

1. It's unnecessary. Most of my friends, family, and neighbors in this area already have 5G coverage. We're doing fine.
2. This tower is already outdated technology. Have you considered better alternatives, e.g., small cell roadside clusters or installing fiber? My main concern here is that this tower will have a useful service lifespan of less than 10 years. This is not an investment that I am **remotely** interested in as a homeowner in the very near vicinity. My dogs will outlive that cell tower.
3. This cell tower will lower the value of the surrounding properties. I know this because my husband and I recently argued against the proposed cell tower by the same company on Bobcat Lane. We've already been through this. Why do we have to keep arguing against this?
4. At 11 stories, the tower would cause major visual pollution in an otherwise scenic area, in violation of 18.07.030(H)(1)(c). It would block our views of Panther Peak, and the Saguaro-filled landscape. We paid good money for those views! It is not reasonable to strip people of that experience, merely to appease one company. Not to mention the eyesore the cell tower will pose for tourists visiting the national park! Regardless if the company plans to "disguising" the tower, a "tree" standing 100+ feet above the surrounding plant life absolutely will not "blend in".
5. It's a massive fire hazard! The access road to the tower, Roxy Lane, is not county maintained, regularly gets flooded and rutted, and would become by far the tallest lightning rod around (with associated flammable material). This is dangerous for everyone, as wildfires spread quickly!
6. As I mentioned in point 3, we've already argued against Vertical Bridge's proposals for cell towers in Picture Rocks. And they're making it way to ease to argue against them. These are the same sloppy mistakes that they made with the proposal for Bobcat Lane, and it's galling. This is not a company that cares about the community they will impact. This is not a company that wants to put its best foot forward and create a better product. This is greed, plain and simple.

With all due respect, these are serious flaws in the county's plan and for these reasons it should be rejected.

Please appreciate that the choice to build this tower is a false dichotomy. Many alternatives exist for 5G coverage (which again, is more than adequate already, according to most residents).

Also note, the tower is in violation of Pima County [18.07.030\(H\)\(1\)\(c\)](#):

To maintain and preserve the existing unique attributes of community character including, but not limited to, architecture, historic and cultural features, historic development patterns, landscape, hardscape and the size, scale and spacing of buildings and other structures that define the community identity of rural and residential neighborhoods, and to preserve property values in those neighborhoods;

Finally, I have a short list of questions that I believe must be addressed in reasonable consideration of this project:

1. Who stands to benefit financially from this project? What is the dollar amount they will benefit?
2. Which other bidders have been considered?
3. Which other locations (if any) have you considered?
4. Would you consider an investment with more reliable service and a longer lifespan such as fiber? My experience in talking with my neighbors is that this idea has been tossed around a few times but not acted upon. **Fiber would be my suggestion, as it offers better service and would minimally impact the surrounding homes, properties and the scenic views.**
5. Why are they still insisting on building a very not native eucalyptus tree to "camouflage" the tower? And when they come back to proposing to build a 100-ft tall saguaro, please allow me to remind you that we've already been here before. This is a lazy company and their proposal should be rejected.

Finally, when Vertical Bridge once again proposes to meet with members of the community to try to find some compromise, probably around 4-6pm, I will be there again.

Thank you for your attention. I would be more than happy to reiterate my distaste for déjà vu at the 10/30/24 Zoning Commission Meeting.

Sincerely,
Rachel

Rachel Shoop, M.S., M.L.I.S.
Research Data Archivist
Life Sciences Data Archive, NASA JSC

10-26-24 Massingale Cell tower

Pima County Planning and Zoning

I own property in Picture Rocks. My nephew, Dr. Aaron Wilson, is a Chiropractor and award winning photographer in Chehalis, Washington. He told me that Saguaro National Park West is a world renowned highly recommended scenic desert park , valued by photographers from around the world. It is famous for the natural beauty, the wildlife, and ability to take excellent sunset and landscape photos. When I hike in Saguaro National Park West, I often see amateur and commercial photographers setting up for photo opportunities of the gorgeous sunsets, either alone or as a backdrop for Wedding, Graduation, Birthday, Anniversary, Bar Mitzvah, or Qunceanera portraits. The proposed cell tower installation at 10510 Massingale would be an ugly eyesore viewed from Saguaro National Park West and Panther Peak. Local wildlife, especially hawks, bees and other protected species would lose habitat and be negatively affected. The world famous scenic views and phot sites would be destroyed. Property values would plummet. The area already has good cell coverage, there is no need for another cell tower. The neighborhood, of which I am part, is vehemently opposed to this proposed cell tower. Please protect Tucson's unique, easily accessible, world renowned scenic landscapes from ruination. The Saguaro National Park's photography vantage would would forever be blighted. We have an opportunity right now to place high value on our rare precious natural resources of beauty and authenticity. The photography tourist industry including my nephew would NOT be interested in photographing a dressed up cell tower I n the background of their sunset photos. Please do not allow the Massingale Cell Tower to be built.

Thank You, Kristi L. Mattson, M.D.

11755 W. Dusty Rocks Lane

520 334- 0532 Cell or 520 441-9032 Landline

KLMattsonMD@gmail.com

TO WHOM IT MAY CONCERN:

RE: Cell Tower at Saguaro National Park West

As someone who has friends that live near this beautiful area and someone who enjoys visiting. I agree that an 80 foot cell tower will be an eyesore and will block resident and visitor views of Saguaro National Park West, especially Panther Peak. The tallest installations in the area are 35 feet.

This is in violation to the Pima County Code, §18.07.030H "To maintain and preserve the existing unique attributes of community character including ...landscape, hardscape and the size, scale and spacing of buildings and other structures that define the community identity of rural and residential neighborhoods, and to preserve property values in those neighborhoods; and "To minimize the adverse impacts of communications towers and related equipment areas on visually sensitive areas including, but not limited, to skylines, rock outcroppings, foothills, mountain backdrops,"

There is no demonstrated need for this installation; all residents report good coverage surrounding this location and coverage maps show no gap in service. There will be up to 20% reduction in property values immediately surrounding this site. The access roads to the tower, W Massingale and Roxy Lane are not County maintained and regularly flood and wash out during monsoons. Not an appropriate location on this basis alone. §18.07.030H (4)(g) " Towers shall be located with access to a publicly maintained road."

The installation site intersects with 3 County designated protected xeroriparian areas Sonoran Desert - Riparian Communities (desertmuseum.org) and is part of a protected wildlife habitat. It is home to families of Harris Hawks who are protected under the Migratory Bird Treaty Act.

The proposed type of camouflage (broadleaf, elm or eucalyptus) for the tower is not allowed at this site according to the County Code which specifies that camouflage must mimic native plants within buffer overlay zones.

Thank you for your consideration

Lynda C Mullins, 8808 No. Wellside Dr, Tucson, AZ 85743

Spencer Hickman

From: Sherryl Volpone <sherryltrv@yahoo.com>
Sent: Friday, October 25, 2024 4:01 PM
To: DSD Planning
Subject: Fw: 2 Videos of Roxy Rd.
Attachments: Easement 1.mov; Easement 2.mov

You don't often get email from sherryltrv@yahoo.com. [Learn why this is important](#)

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Subject: P24CU00007 October 30th2024, 10510 W Massingale /Vertical Bridge tower proposal Part 3 Of 3

Hello

I, Sherryl Volpone, I am attaching and submitting 3 emails, a brief/memorandum, exhibits: with approx. 90 letters from homeowners/ residents in the community/ also maps and photos. the 3rd is videos of Roxy Rd.

These letters are in opposition to the Application for Conditional Use Type III permit by Vertical Bridge for the installation of an 80ft tower at 10510 W Massingale Rd.

The law firm of Andrew J Campanelli and Associates will participate virtually to speak on behalf of the community.

Thank you,
Sherryl Volpone

COUNTY OF PIMA
STATE OF ARIZONA

-----X
In the Matter of the Application of:

VERTICAL BRIDGE, LLC

For Conditional Use Permit

Premises: 10510 W Massingale Road
Tucson, AZ 85743

Case: P24CU00007
Parcel #: 215-40-026A
-----X

MEMORANDUM IN OPPOSITION

Respectfully submitted,

Sherrly Volpone – 10550 W Massingale Rd., Tucson, AZ 85743
Lucas West – 10550 W Massingale Rd., Tucson, AZ 85743
Coi Pappas – 7719 N. Lydia Ave., Tucson, AZ 85743
Connie Pappas – 7719 N. Lydia Ave., Tucson, AZ 85743
Lori Kilgress – 10616 W. Massingale Rd., Tucson, AZ 85743
Monica Thompson – 12478 W. Picture Rocks Rd., Tucson, AZ 85743
Joy Wilson – 10480 W. Anthony Dr., Tucson, AZ 85743
Jay Sharp – 7715 N. Cherokee Pony Trail, Unit 1, Tucson, AZ 85743
Charlie Knagge – 10390 W. Massingale Rd., Tucson, AZ 85743
Julie Jacobs – 10380 W. Masasingale Rd., Tucson, AZ 85743
Fernando Moniz – 10225 W. Massingale Rd., Tucson, AZ 85743
William J. Armstrong – 10481 W. Massingale Rd., Tucson, AZ 85743
Margaret A. Macleish – 10909 W. Anthony Dr., Tucson, AZ 85743
Cathy Curran – 10392 W. Massingale Rd., Tucson, AZ 85743
Johanna Curran – 10392 W. Massingale Rd., Tucson, AZ 85743
Robert Pledge – 10500 W. Anthony Dr., Tucson, AZ 85743
Jean D'Alonzo – 10500 W. Anthony Dr., Tucson, AZ 85743
Robin Nicholson – 10230 W. Massingale Rd., Tucson, AZ 85743
Keith Winans – 10230 W. Massingale Rd., Tucson, AZ 85743
Damon Welch – 10501 W. Anthony Dr., Tucson, AZ 85743
Charlie Galloway – 10660 W. Massingale Rd., Tucson, AZ 85743
Peter Hnath – 11640 W. Anthony Dr., Tucson, AZ 85743

Zander Hnath – 11250 W. Anthony Dr., Tucson, AZ 85743
Khya Hnath – 11750 W. Anthony Dr., Tucson, AZ 85743
Joshua Hnath – 11850 W. Anthony Dr., Tucson, AZ 85743
M.T. Abatecola – 11520 W. Royalty Dr., Tucson, AZ 85743
Miki Abatecola – 11520 W. Royalty Dr., Tucson, AZ 85743
Jake Avenenti – 10241 W. Anthony Dr., Tucson, AZ 85743
Rhonda Carter – 10455 W. Mars, Tucson, AZ 85743
Mike Carter – 10455 W. Mars, Tucson, AZ 85743
Wilberta Messamore – 7585 N. Shaggy Tree Lane, Tucson, AZ 85743
Sue Murphy – 10440 W. Massingale Rd., Tucson, AZ 85743
Sedona Murphy - 10440 W. Massingale Rd., Tucson, AZ 85743
Michael P. McMahon – 10440 W. Massingale Rd., Tucson, AZ 85743
Edward Jakubcik – 10333 W. Massingale Rd., Tucson, AZ 85743
Nicole Lowery – 10720 W. Massingale Rd., Tucson, AZ 85743
Frances Schlack – 10300 W. Anthony Dr., Tucson, AZ 85743
Susan Ybarra – 13156 W. Trail Dust Rd., Tucson, AZ 85743
Sheila S. Dobson – 7606 N. Shaggy Tree Ln., Tucson, AZ 85743
Justin H. Fogel – 7606 N. Shaggy Tree Ln., Tucson, AZ 85743
Angela Pelson – 10450 W. Anthony Dr., Tucson, AZ 85743
Joseph Liardi – 11250 W. Anthony Dr., Tucson, AZ 85743
Jay Maseriant – 11459 W. Anthony Dr., Tucson, AZ 85743
Michael Cenicerros - Tucson, AZ 85743
Amy Skomski – 7750 N. Cherokee Pony Tr., Tucson, AZ 85743
Pat Chacon – 7665 N. Pale Stone Pl, Tucson, AZ 85743
Ahne Flores – 10400 W. Massingale Rd., Tucson, AZ 85743
Rosenda Pelayo – 10667 W. Anthony Dr., Tucson, AZ 85743
Tim Backus – 10390 W. Windchime Dr., Tucson, AZ 85743
Ryan Lipphardt – 10468 W. Massingale Rd., Tucson, AZ 85743
Jessica Lipphardt – 10468 W. Massingale Rd., Tucson, AZ 85743
Ty Lipphardt – 10468 W. Massingale Rd., Tucson, AZ 85743
Richelle Lipphardt – 10468 W. Massingale Rd., Tucson, AZ 85743
Jenny Birmingham – Tucson, AZ 85743
Kelly Taylor – Tucson, AZ 85743
Chuck Taylor – Picture Rocks, AZ
James Reynolds – 10641 W. Massingale Rd., Tucson, AZ 85743
Brad D'Emidio – 5547 Panther Butttest., Marana, AZ 85658
Donna Corbin – 5700 N. Tula Lane, Picture Rocks, AZ 85743
John Stone – 10131 W. Picture Rocks Rd., Tucson, AZ 85743
Bobbi Stone – 10131 W. Picture Rocks Rd., Tucson, AZ 85743
Amy Fiser – 10641 W. Massingale Rd., Tucson, AZ 85743

Joy Wilson – 10480 W. Anthony Dr., Tucson, AZ 85743
Melissa Horton – 10464 W. Massingale Rd., Tucson, AZ 85743
Jason Romo – 10464 W. Massingale Rd., Tucson, AZ 85743
Rosenda Pelayo – 10667 W. Anthony Dr., Tucson, AZ 85743
Carmen Rios – 10667 W. Anthony Dr., Tucson, AZ 85743
Carlos Garcia – 10667 W. Anthony Dr., Tucson, AZ 85743
San Juan Garcia – 10667 W. Anthony Dr., Tucson, AZ 85743
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Dale D. Pelton – 10450 W. Anthony Dr., Tucson, AZ 85743
Marieanne Stoffel – 6875 N. Mixer Way Tucson, AZ 85743
Hannah Martinez – 10468 W. Massingale Rd., Tucson, AZ 85743
Lucas Martinez – 10468 W. Massingale Rd., Tucson, AZ 85743
Anne Martinez – 11622 W. Ina Rd., Tucson, AZ 85743
James Burnett – 10461 W. Massingale Rd., Tucson, AZ 85743
Elizabeth Wheeler-Hwang – 7590 N. Lydia Ave., Tucson, AZ 85743
Maxine Wheeler-Hwang – 7590 N. Lydia Ave., Tucson, AZ 85743
Andrew Hwang – 7590 N. Lydia Ave., Tucson, AZ 85743
Janae E. Wheeler – 7590 N. Lydia Ave., Tucson, AZ 85743
Samantha Wheeler – 7590 N. Lydia Ave., Tucson, AZ 85743
Shirrie Hutchby – 7650 Pale Stone Pl., Tucson, AZ 85743
Shawn Tucker – 7650 N. Pale Stone Pl., Tucson, AZ 85743
Cruz Gallindo 10468 W. Massingale Rd., Tucson, AZ 85743
Lynn A. Adams – 7530 N. Desert Post Ln., Tucson, AZ 85743
Jan Achey – 11640 W. Anthony Dr., Tucson, AZ 85743
Kelly Achey – 11640 W. Anthony Dr., Tucson, AZ 85743
Anthony Martinez – 11622 W. Ina Rd., Tucson, AZ 85743
Virginia Marth – 10040 W. Rudasill Rd., Tucson, AZ 85743
Living Desert Allaince – P.O. Box 776, Marana, AZ 85658

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Preliminary Statement

Vertical Bridge, LLC has filed an application with Pima County Development Services Department Planning Division for a Conditional Use Permit and site plan approval to build a Communications Tower at 10510 W. Massingale Rd., Tucson. The proposed tower, an 80-foot Monoeucalyptus, would be erected in a GR-1 rural residential neighborhood where the homes and buildings are single story, and the majority of vegetation doesn't rise above the homes' roof lines. This 80-foot, eight story tower would be more than twice the height of the tallest trees and more than five (5) times as tall as the single story homes. It is wholly incongruous with the surrounding area and would loom over the beautiful desert landscape and the neighboring homes, sticking out like the proverbial "sore thumb."

This memorandum in opposition is being submitted by and on behalf of multiple homeowners, noted below, whose homes are situated adjacent to or in close proximity to the site of the proposed Vertical Bridge cell tower.

As set forth below, Vertical Bridge's application should be denied because:

- (a) as proposed, the telecommunications tower does not comply with applicable federal, state and County statutes and regulations;
- (b) granting the application would violate provisions of the Pima County Zoning Code as well as the legislative intent of the Code;
- (c) the applicant has failed to establish that the proposed facility: (i) is actually necessary for the provision of personal wireless services within Pima County or (ii) that it is necessary that the facility be built at the proposed site;
- (d) the irresponsible placement of the proposed facility would inflict upon the nearby homes and community the precise types of adverse impacts which the Zoning Code was enacted to prevent.
- (e) the construction of the tower as proposed constitutes a fire hazard

As such, we respectfully submit that Vertical Bridge's application be denied in a manner consistent with the provisions of the Telecommunications Act of 1996.

As a preliminary matter, when Vertical Bridge held its community meeting, their representative did not make her identity clear – some residents thought she was a County employee. She also gave the impression that the proposed tower was a “done deal” and that neither the County nor adjacent homeowners could do anything about it. Whether these impressions were given deliberately or are the product of poor communication, it would behoove Vertical Bridge to ensure that their presenter's identity is clear and to refrain from making inaccurate statements about the law.

Additionally, an issue which was not addressed in the application is the frequent blasting at the nearby quarry. Residents report cracking of walls, ceilings and foundations in their homes due to the blasting. Homeowners are rightly concerned about the effect that the blasting will have on a wireless facility located very close to the quarry. Obviously, in light of the recurring blasting at the quarry, the proposed location is not appropriate for construction of a cell tower.

POINT I

**Granting Vertical Bridge Permission To Construct
a Wireless Telecommunications Facility at the
Proposed Location Would Violate Both the
Provisions of the Pima County Zoning Code
and The Legislative Intent Thereof**

**A. Local Municipalities Are Authorized by the TCA
to Regulate Telecommunications Facilities**

The proliferation of wireless communications facilities has resulted in the need for

municipalities to pass legislation to regulate their construction. Although many site developers and cellular service providers will argue that the Telecommunications Act of 1996 (TCA) prohibits local governments from regulating telecommunications facilities, this is simply untrue. The TCA, 47 U.S.C. §332(c)(7) specifically *preserves local zoning authority*. Subsection (A) provides for general authority as follows:

(7) Preservation of local zoning authority

(A) General authority

Except as provided in this paragraph, nothing in this chapter 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.

While subsection (B) forbids a municipality from “unreasonably discriminat[ing] among providers” and from completely “prohibiting the provision of personal wireless services” the fact remains that a municipality may restrict the placement, location, construction, and modification of wireless facilities in their community through zoning regulations. *See, T-Mobile South, LLC v. Roswell*, 135 S.Ct. 808 (2015); *GTE Mobilenet of California Ltd. P’ship v City of Berkley*, 2023 WL 2648197 (D. N.D. CA 2023); *Colfaxnet LLC v City of Colfax*, 2020 WL 6544494 (D. E.D. CA 2020).

“The TCA seeks to strike a balance between its goal of ‘encourage[ing] the rapid deployment of new telecommunications technologies’ without unduly encroaching on traditional local zoning authority.” *New Cingular Wireless PCS LLC d/b/a AT&T Mobility v. Zoning Board of Adjustment of the Borough of North Haledon*, 469 F.Supp.3d 262 (D. N.J. 2020) *citing, T Mobile Ne. LLC v. City of Wilmington, Del.*, 913 F.3d 311 (3d Cir. 2019). “To this end,

it ‘expressly preserves the traditional authority enjoyed by state and local government to regulate land use’ *Id.*, citing, *APT Pittsburgh Ltd. P’ship v. Penn Twp. Butler Cty. of Pa.*, 196 F.3d 469 (3d Cir. 1999); *Extenet Systems, Inc. v. Township of North Bergen, New Jersey*, 2022 WL 1591398 (D.N.J. 2022).

Simply stated, the TCA provides that an application to erect a cell tower can – and should – be treated as a land use issue, to be decided by a municipality in its ordinary course of business, using the same considerations normally employed in a land use case.

Consistent with the intent of this federal law, informed local governments have enacted “Smart Planning Provisions,” which are local land use regulations designed to:

- (a) prevent an *unnecessary proliferation* of wireless facilities while
- (b) preventing, to the greatest extent possible, unnecessary adverse impacts upon residential homes and communities due to the irresponsible placement of wireless facilities.

As set forth below, Vertical Bridge’s application should be denied because granting the application violates not only the *requirements* of the applicable County’s laws and regulations, but their *legislative intent*.

As set forth below, Vertical Bridge’s application should be denied because granting the application would violate both the *requirements* of the Code as well as the *legislative intent* behind those requirements.

As explicitly set forth in §18.01.020 B of the County’s Zoning Code, the Code’s provisions are adopted for the promotion and protection of the public health, peace, safety, comfort, convenience and general welfare of the County’s citizens. In addition, the Guiding Principles of the Code (§18.01.030 A) include the following:

B. Guiding Principles

6. No special favors or privileges shall be granted to any individual or group of property owners and *no permit shall be issued* under the terms of this code *which will or might reasonably tend to destroy the established economic or social uses and values of adjacent or surrounding properties.*

7. On every application of this code to any given area, the relative importance of the interests involved shall be as follows:

a. First, *established conforming uses of adjacent or surrounding properties* having an equal or higher classification;

(emphasis added)

Based on these Guiding Principles, the County clearly intended to place the interests of existing adjacent homeowners above the commercial interests of the cell tower industry. Therefore, Vertical Bridge's application for the proposed tower should be denied.

Furthermore, and specifically addressing telecommunications towers, §18.07.030 H (Land Use Regulations – Communications Towers) clearly states that the purpose of the County's applicable zoning regulations is:

a. To regulate the placement, construction and modification of communications towers and related equipment area in order *to protect the health, safety and welfare of the public...*

b. *To minimize the total number of communication towers throughout unincorporated Pima County by maximizing the use of existing communication towers in order to reduce the number of new towers needed;*

c. *To maintain and preserve the existing unique attributes of community character including, but not limited to, architecture, historic and cultural features, historic development patterns, landscape, hardscape and the size, scale and spacing of building and other structures that define the community identity of rural and residential neighborhoods, and to preserve property values in those neighborhoods;*

d. To encourage the location of communication towers in business and industrial zones and in areas of compatible uses;

e. *To minimize the adverse impacts of communications towers and related*

equipment areas on visually sensitive areas including, but not limited, to skylines, rock outcroppings, foothills, mountain backdrops, unique vegetation, streams and natural drainageways through the careful design, siting, landscape screening and innovative camouflaging techniques utilizing current and future technologies;

f. *To promote and encourage shared use or co-location of communication towers and antenna support structures;*

g. *To protect the aesthetic quality of neighborhoods by encouraging the siting of communication towers to minimize negative aesthetic impacts and ensure to the extent possible that communications towers and related equipment area are compatible with surrounding land uses...*

(emphasis added)

The Pima County legislators were very clear in their desire to protect the welfare of County residents, the character, quality and value of neighborhoods, as well as to protect the natural spaces and vistas of the County. Though certainly not prohibited, cell towers must be sited and constructed so as not to infringe on the beauty and unique attributes of communities.

Moreover, “[T]he concept of the public welfare is broad and inclusive.” *Voice Stream PCS v. City of Hillsboro*, 301 F.Supp.2d 1271 (D. Ore. 2004), (quoting *Berman v. Parker*, 348 U.S. 26, (1954). *Vertical Bridge Development, LLP v. Brawley City Council*, 2023 WL 3568069 (S.D. Calif. 2023). A municipality is within its authority to weigh the benefit of merely improving the existing coverage against the negative aesthetic impact the tower would cause. *Id.*

The values represented by the concept of the “public welfare” are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy *Voice Stream, supra.*

A careful examination of the applicable Code provisions can lead to only one conclusion – that Vertical Bridge’s proposed tower cannot possibly comply with either the letter of the law, nor its spirit, and their application should be denied.

C. The Proposed Site Is Not Accessible
To A Publicly Maintained Road

§18.07.030 H (4)(g) requires that “Towers shall be located with access to a publicly maintained road.” The proposed site is *not* accessible by a publicly maintained road. Roxy Road, Lydia Ave., and W. Massingale Road are unpaved, rutted, dirt roads, not maintained by the County or any other municipality. In fact, Roxy Rd. is an easement and therefore not the County’s responsibility to maintain. It’s also particularly susceptible to heavy rains which wash it out, creating deep ruts and trenches, making navigation difficult at best. In fact, during a heavy rain, fast running water runs right toward the proposed site. Not only does the nature of Roxy Rd., Lydia Ave. and W. Massingale Rd. make them unsuitable as the main access roads for a telecommunications tower, as discussed below their condition creates a fire hazard greater than the average cell tower.

D. Letter of Intent

§18.07.030 H (3)(g) requires applicants to “provide evidence in writing that at least one cellular phone provider is committed to locate on the tower.” Although numerous references are made to T-Mobile, Vertical Bridge has not submitted any actual letter from T-Mobile declaring their intent to locate antennae on the proposed tower.

E. Alternative Sites

§18.07.030 H (3)(f) requires an applicant to submit details about alternative sites. Although Vertical Bridge submitted information about twenty (20) other sites, their documentation is sorely lacking. Thirteen (13) of the prospects are listed as “no reply,” yet no further information is provided regarding what efforts were made to follow up with these sites. How many letters were sent? How were they addressed and what was the return address? Did

it look like junk mail which most people would throw away? How many times did someone from Vertical Bridge try to call the homeowner? Did anyone attempt to make any in-person contact? What was the size of the search ring?

Of the 20 alternative sites, one is the proposed site. One site is owned by the United States government. What efforts were made to follow up with the government? The quarry was initially interested in entering into a lease, but “they decided not to lease” their site. No further details were provided.

The Picture Rocks Fire District is not listed as an alternative site and is only 1.7 miles from the proposed site. It should be well within the search ring and would be a much more acceptable site where T-Mobile could collocate their antennae. Yet it’s not even listed among the alternative sites.

F. Applicant Has Failed To Submit Proper Photo Simulations

Code §18.07.030 H (3)(c) requires an applicant to submit photo simulations depicting the site – with and without the tower – together with the surrounding area. Vertical Bridge submitted a few photos, none of which indicate exactly where they were taken or the distance the photographer was from the tower. They only indicate the compass direction of the photo. These photos are little more than useless. None of them was taken from the perspective of the neighboring homes.

Vertical Bridge’s photo simulations are patently defective and should be disregarded entirely. In a hollow effort to induce the County to believe that the installation of the proposed wireless facility *would not* inflict a severe adverse aesthetic impact upon the adjacent homes,

Vertical Bridge has failed to submit any meaningful or accurate visual impact analysis. The photo simulations are inherently defective because they do not serve the purpose for which they have purportedly been offered.

The whole purpose for which local governments require photo simulations of a proposed wireless facility is to require applicants to provide the reviewing authority with a clear visual image of the *actual* aesthetic impacts that a proposed installation will inflict upon the nearby homes and residential community. Not surprisingly, applicants often seek – disingenuously – to minimize the visual impact depictions by *deliberately omitting* from any such photo simulations, any images actually taken from the nearby homes which would sustain the most severe adverse aesthetic impacts.

In *Omnipoint Communications Inc. v. The City of White Plains*, 430 F3d 529 (2nd Cir. 2005), the United States Court of Appeals for the Second Circuit explicitly ruled that where a proponent of a wireless facility presents visual impact depictions which “omit” any images from the actual perspectives of the homes which are in closest proximity to the proposed installation, such presentations are inherently defective and should be disregarded. The federal court explicitly stated that “the Board was free to discount Omnipoint’s study because it was conducted in a defective manner. . . *the observation points were limited to locations accessible to the public roads, and no observations were made from the residents’ backyards much less from their second story windows*” *Id.*

Vertical Bridge’s has failed to submit a meaningful visual impact analysis. They have not included a single image taken from *any* of those nearby homes which will sustain the most severe adverse aesthetic impacts from the installation of the wireless facility.

There is a complete absence of any photographic images taken from any of the homes belonging to the homeowners whose adverse aesthetic impact letters are collectively annexed hereto as **Exhibit “A”** (see below). Instead, it is unclear where the photos were taken from, the distance the tower would be, and the photos are from perspectives selected to minimize the appearance of the adverse aesthetic impact. They in no way accurately depict the images those homeowners will see, each and every time they look out their bedroom, kitchen, or living room windows, or sit in their backyards.

This is the exact type of “presentation” which the federal court explicitly ruled to be defective in *Omnipoint*. As such, in accord with the federal court’s holding in *Omnipoint*, Vertical Bridge’s photo simulations should be recognized as inherently defective and disregarded in their entirety.

G. Camouflage Style

Pursuant to §18.07.030 H (2)(d)(1) the design of the cell tower should mimic “surrounding existing vegetation....” Native plants are required to be used in the Buffer Zone.

This 8 story tower will purportedly use stealth technology to be disguised as a “monoecalyptus” but no one will be fooled. This “tree” will be enormous in comparison to the few nearby trees and other low vegetation, will clearly be artificial, and will not blend in with the other vegetation. It’s impossible to camouflage such an eyesore, no matter how vigorously Vertical Bridge claims it will blend into the surroundings. Instead, it will tower over the nearby homes and will forever change the unique character of the community. The proposed tower will *not* be compatible with the nearby properties, resulting in a severe negative aesthetic impact together with a substantial decrease in property values.

POINT II

Vertical Bridge's Irresponsible Placement of Its Proposed Wireless Facility Will Inflict Substantial Adverse Impacts Upon the Aesthetics and Character of the Area

The adjacent and nearby residents are not against all wireless communications towers, just those that are irresponsibly sited, such as Vertical Bridge's proposed tower.

A local government may reject an application for construction of a wireless service facility even in an under-served area without thereby prohibiting personal wireless services if the service gap can be closed by less intrusive means. *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630, 643 (2d Cir. 1999) citing *Town of Amherst v. Omnipoint Communications*, 173 F.3d 9 (1st Cir. 1999).

A Planning Board "is entitled to make an aesthetic judgment as long as the judgment is 'grounded in the specifics of the case....'" *New Cingular Wireless PCS, LLC v County of Marin, California*, 2021 WL 5407509, citing *Voice Stream PCS I v City of Hillsboro*, 301 F Supp 2d 1251, (D. Or. 2004).

A. The Proposed Telecommunications Tower Will Inflict Substantial Adverse Impacts Upon the Aesthetics and Character of the Area

It is beyond argument that the irresponsible placement of Vertical Bridge's proposed 80-foot tower will dominate the skyline and inflict substantial adverse aesthetic impacts upon the nearby single story homes.

Federal courts around the country, including the United States Court of Appeals for the Second Circuit, have held that significant or unnecessary adverse aesthetic impacts are proper legal grounds upon which a local government may deny a zoning application seeking approval for constructing a wireless telecommunication facility. *See Omnipoint Communications Inc., supra; T-Mobile Northeast LLC v. The Town of Islip*, 893 F.Supp.2d 338 (2012); *Crown Castle NGE, Inc. v. Town of Greenburgh, N.Y.*, 552 F. App'x 47, 50 (2d Cir. 2014).

“[The municipality] may consider a number of factors including the height of the proposed tower, the proximity of the tower to residential structures, the nature of uses on adjacent and nearby properties, the surrounding topography, and the surrounding tree coverage and foliage. We, and other courts, have held that these are legitimate concerns for a locality.” *T-Mobile USA, Inc. v. City of Anacortes*, 572 F.3d 987, 994 (9th Cir. 2009) *See also Sprint Telephony PCS, L.P. v. City of San Diego*, 543 F.3d 571, 580 (9th Cir. 2008) (stating that the zoning board may consider “other valid public goals such as safety and aesthetics”); *T-Mobile Cent., LLC v. Unified Gov't of Wyandotte County, Kan.*, 546 F.3d 1299, 1312 (10th Cir.2008) (noting that “aesthetics can be a valid ground for local zoning decisions”); and *Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 494 (2d Cir.1999) (recognizing that “aesthetic concerns can be a valid basis for zoning decisions”).

B. Probative Evidence of the Actual Adverse Aesthetic Impacts Which the Facility Will Inflict Upon the Nearby Homes

As logic would dictate, and as federal courts have held, it is the homeowners who are best suited to accurately assess the nature and extent of the adverse aesthetic impacts upon their

homes of an irresponsibly placed wireless telecommunication facility. This is especially true of homeowners whose property is adjacent or in close proximity to a proposed cell tower.

The United States Court of Appeals for the Second Circuit has recognized that when a local government is considering an application for a wireless facility, it should accept, as direct evidence of the adverse aesthetic impacts that a facility would inflict upon nearby homes, statements and letters from the actual homeowners—*i.e.*, because they are in the best position to know and understand the actual extent of the impact they stand to suffer. *See, e.g., Omnipoint Communications Inc. v. The City of White Plains*, 430 F.3d 529 (2d Cir. 2005); *Industrial Tower and Wireless, LLC v. Roisman*, 2024 WL 4329935 (D. Vt. 2024).

Federal Courts have consistently held that adverse aesthetic impacts are a valid basis for denying wireless facilities applications. *Green Mountain Realty Corp. v. Leonard*, 688 F.3d 40, 53 (1st Cir. 2012); *Omnipoint Comm. Inc. v. City of White Plains*, 430 F.2d 529 (2d Cir. 2005); *VWI Towers LLC v. Town of N. Andover Pl. Bd.*, 404 F. Supp. 3d 456 (D. Mass. 2019).

The annexed **Exhibit “A”** consists of **nearly 90 letters** from homeowners whose homes are adjacent to or are situated in close proximity to the proposed wireless facility.

Within each of those letters, the homeowners personally detail the specific adverse aesthetic impacts that the proposed facility would inflict upon their respective homes. They have provided detailed and compelling explanations of the dramatic adverse impacts their properties would suffer if the proposed installation of a wireless telecommunication facility were permitted to proceed. They describe the reasons they moved to their neighborhood and how they love their beautiful, natural surroundings. Most residents moved to the area specifically for the quiet, rural character of the neighborhood. They love the beautiful vistas, the natural surroundings and

proximity to the National Park. The erection of Vertical Bridge's cell tower would abrogate those reasons and destroy what's special about their homes and the beautiful landscapes and vistas, as well as their quality of life.

These personal letters from homeowners, family, and friends provide detailed descriptions of the adverse aesthetic impacts which the proposed tower would inflict upon adjacent, adjoining, and nearby homes. (See **Exhibit "A"**).

The specific and detailed impacts described by these letters constitute "substantial evidence" of the adverse aesthetic impacts residents stand to suffer. They are not limited to "generalized concerns" but instead contain detailed descriptions of how the proposed wireless facility would dominate the views from their backyards, decks where they enjoy their morning coffee and entertain family and friends, their front yards, bedroom windows, living rooms, and "from all over" their properties, and "from every angle" therefrom. Residents are particularly concerned about their views of Panther Peak since the proposed tower will be right in the middle of what has until now been a unique, beautiful, peaceful view.

As detailed therein, the substantial adverse aesthetic impacts, which the proposed wireless facility's irresponsible placement would inflict upon the nearby homes, are the precise type of injurious impacts that the County Zoning regulations were specifically enacted to prevent.

Accordingly, Vertical Bridge's application should be denied in its entirety.

C. The Proposed Installation Will Inflict Substantial and Wholly Unnecessary Losses in the Values of Adjacent and Nearby Residential Properties

In addition to the adverse impacts upon the aesthetics and residential character of the