



# Imperial County Planning & Development Services Planning / Building

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**Jim Minnick**  
DIRECTOR

TO:

Commissioner Mike Goodsell  
Commissioner Jenell Guerrero  
Commissioner Dennis Logue  
Commissioner Sylvia Chavez  
Commissioner Jerry Arguelles

FROM:

Jim Minnick, Secretary  
Planning & Development Services Director

SUBJECT:

Public Hearing for the consideration of a proposed 180-foot wireless communication facility (Conditional Use Permit #23-0010 & Variance #23-0004) located at 637-639 Sidewinder Rd N., Winterhaven, Ca. 92283 (APN 056-470-002-000); Latitude 32° 45' 13.8996"N – Longitude 114° 45' 36.8454"W to determine Consistency with the Airport Land Use Compatibility Plan (ALUCP). [Evelia Jimenez, Planner II] (**ALUC 05-23**)

DATE OF REPORT:

July 19, 2023

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AGENDA ITEM NO:

3

HEARING DATE:

July 19, 2023

HEARING TIME:

6:00 p.m.

HEARING LOCATION:

County Administration Center  
Board of Supervisors Chambers  
940 Main Street  
El Centro, CA 92243

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## STAFF RECOMMENDATION

It is Staff's recommendation that the Airport Land Use Commission finds the proposed 180-foot wireless communication facility, located at 637-639 Sidewinder Rd N., Winterhaven, CA. 92283 to be consistent with the 1996 Airport Land Use Compatibility Plan.

## SECRETARY'S REPORT

### **Project Location:**

The proposed wireless communication facility will be located at 637-639 Sidewinder Rd N., Winterhaven, Ca 92283. The property is identified as Assessor's Parcel Number (APN 056-470-002-000) and is further described as POR SBE 872-13-9-3 OF SEC 21 16-21 Latitude 32° 45' 13.8996"N – Longitude 114° 45' 36.8454"W .

### **Project Description:**

The applicant, CitySwitch, is proposing to construct a communications facility which consists of a 170' monopole tower with a 10'-0" lightning rod, for a total height of 180'-0" to be located within a 57'-0" x 45" leased, fenced area, within a parcel owned by the Union Pacific Railroad Company and within its railroad right-of-way. The proposed telecommunications tower will be erected, owned, and operated by CitySwitch. CitySwitch will be offering it as a shared facility to Union Pacific, with whom CitySwitch already has a commitment with as well as with At&T Mobility. Additionally, the facility will be open for co-location to other wireless providers and any other communication carriers that have a need for a facility in this area. The proposed telecommunications facility requires a Conditional Use Permit (#23-0010) for the wireless communication facility and a Variance (#23-0004) to exceed the 100-foot height limitation for the Open Space/Preservation (S-2) zoned area by 80 feet.

The proposed facility is designed to house the equipment necessary to provide Union Pacific and AT&T's critical communications for the railroad line and uninterrupted AT&T wireless services to the residents and visitors of Winterhaven, Imperial County, and surrounding areas, including wireless telephone service, voice paging, messaging, and wireless internet and broadband data transmission. All registered wireless providers' technology operates at various radio frequency bands allocated by the Federal Communications Commission (FCC) as part of their license.

After construction, the proposed wireless telecommunications facility will be unmanned and will only require service technicians, in a pick-up or van sized vehicle, to visit the site approximately once a month. Access will be provided via an easement with the proposed access entry point off Sidewinder Rd N. The only utilities required to service the facility are power and fiber. The site is entirely self-monitored through a sophisticated alarm system, which is connected to a main switch station. The system alerts personnel of any equipment malfunction or breach of security. Additionally, there will be no impacts on County's water and sanitation (sewer) utilities as they will not be used at the site.

In accordance with Federal Communications Commission (FCC) regulations, the proposed wireless telecommunications facility will be designed and constructed to meet and/or exceed all applicable government and industry safety standards. Specifically, CitySwitch will comply with all Federal Communications Commission (FCC) and Federal Aviation Agency (FAA) rules and regulations regarding construction requirements and technical standards. The proposed wireless communication facility's Radio Frequency (RF) emissions will comply with the Federal Communications Commission's (FCC) Radio Frequency emission standards. Additionally, the proposed wireless communication facility will comply with the Federal Aviation Agency's (FAA) height, lighting, and marking requirements.

### **General Plan/ALUCP Analysis:**

The wireless communication facility is being proposed in the Winterhaven area and is not located near any County Public Airport or airstrip. The nearest airport is the Holtville Airport located approximately eight (30.27) miles northwest of the project site.

The project site is zoned S2 (Open Space/Preservation) per Zoning Map #70 of the Imperial County Title 9 Land Use Ordinance.

The Airport Land Use Compatibility Plan (ALUCP), Chapter 2, Policies, Section 2.3, provides "Types of Actions Reviewed" by the Commission, which shall include:

"Any request for variance from a local agency's height limitation ordinance; and any other proposed land use action, as determined by the local planning agency, involving a question of compatibility with airport activities" (Section 2.3.3(c)(h), pg. 2-3 & 2-4)

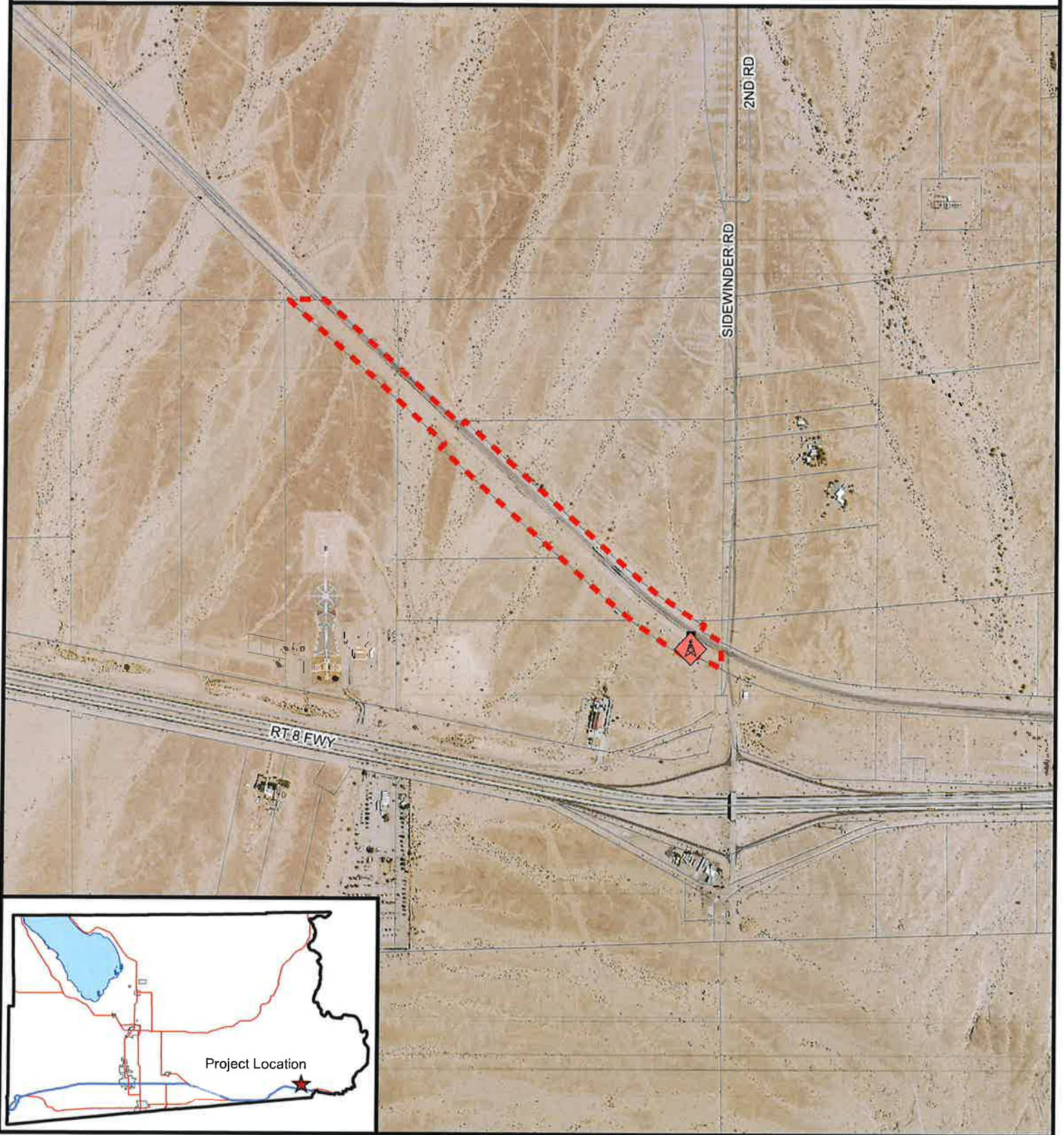
The proposed Variance (V#23-0004) and Conditional Use Permit (CUP#23-0010) have been submitted for the Airport Land Use Commission's review and determination of consistency with the 1996 Airport Land Use Compatibility Plan (ALUCP) due to the nature of the application (a 180-foot wireless communication facility).

#### ATTACHMENTS:

- A. Vicinity Map
- B. ALUC Map
- C. Assessor's Plat Map
- D. Site Plan
- E. Application & Supporting Documents
- F. ALUCP Section

**ATTACHMENT A**  
**VICINITY MAP**

# PROJECT LOCATION MAP

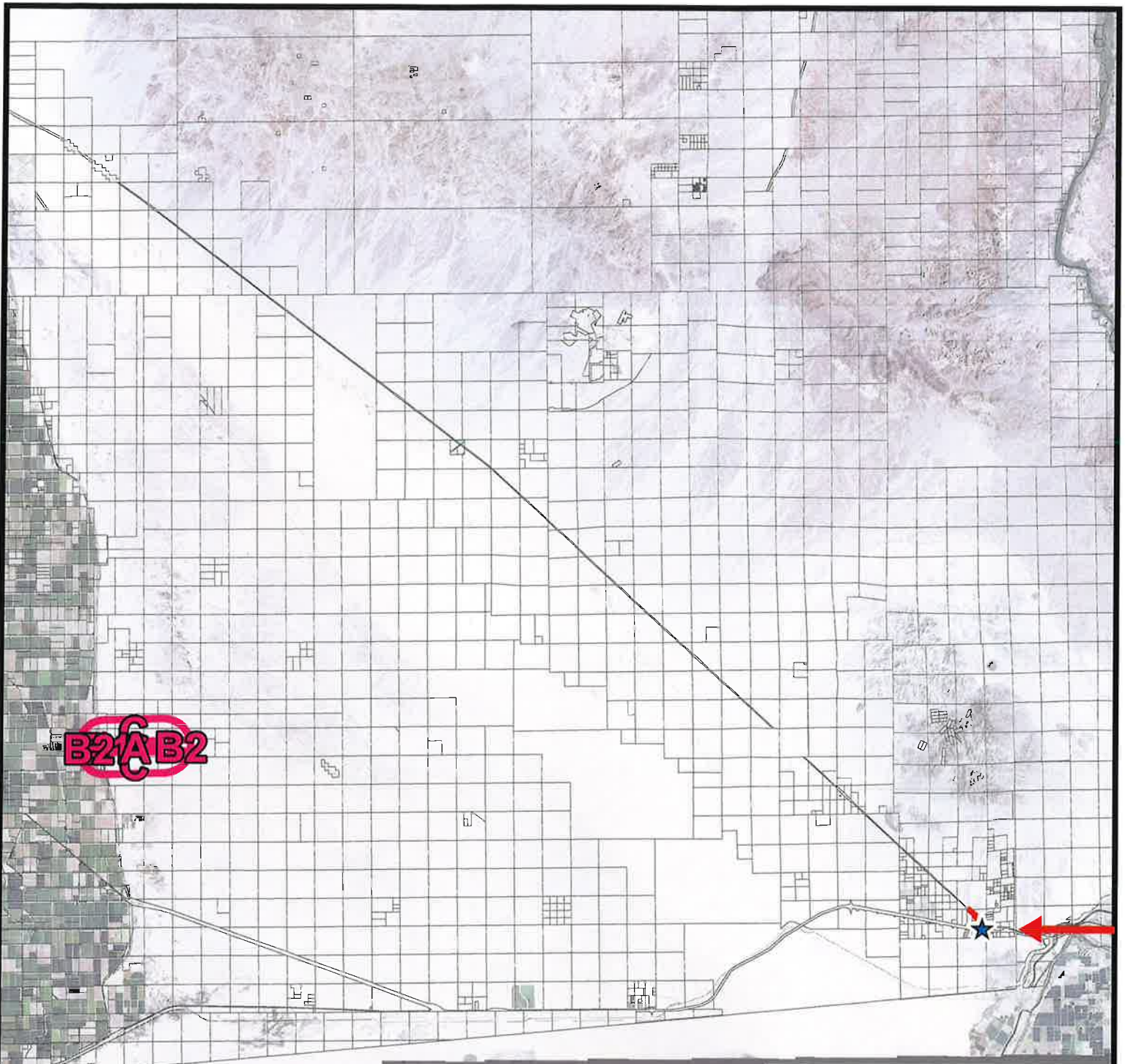


**CITYSWITCH**  
**637-639 SIDEWINDER R.**  
**WINTERHAVEN, CA.**  
**CUP #23-0010 / IS 23-0010 / V 23-0004**  
**APN 056-470-002-000**

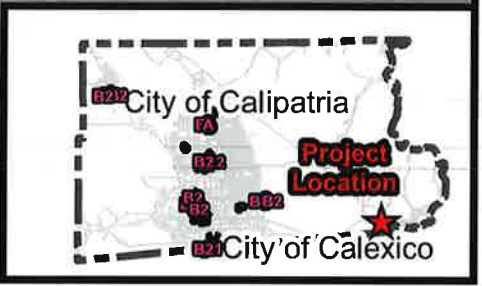
-  Project Location
-  Centerline
-  Parcels
-  Tower Location



**ATTACHMENT B**  
**ALUCP MAP**



-  Project Location
-  Tower Location
-  Airport Compatibility Zones



**IMPERIAL COUNTY AIRPORT LAND USE COMMISSION**  
**CITYSWITCH**  
**673 SIDEWINDER RD, WINTERHAVEN, CA**  
**CUP 23-0010 / IS 23-0010 / V 23-0004**  
**APN 056-470-002-000**



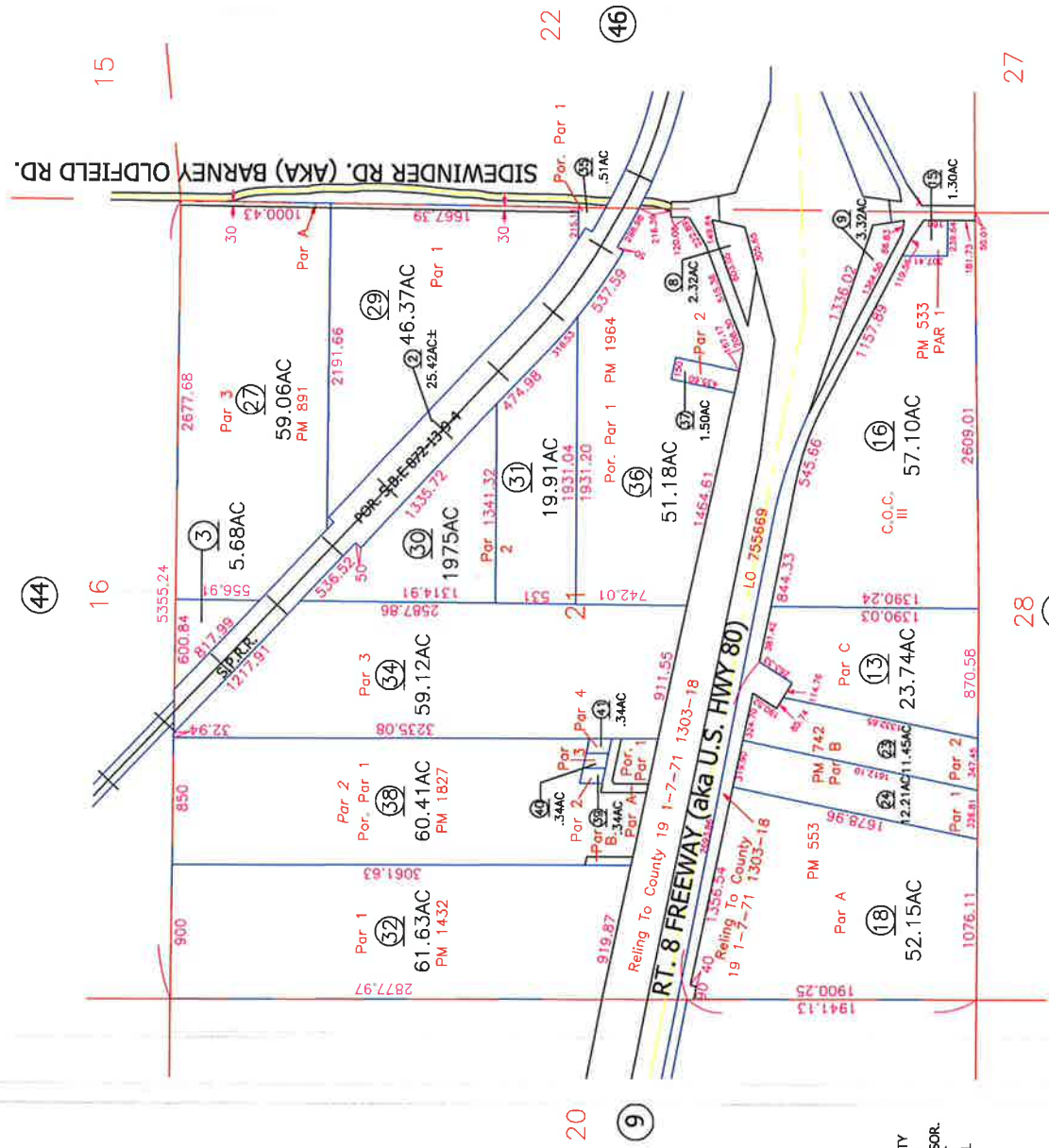
**ATTACHMENT C**  
**ASSESSOR PLAT MAP**



SEC. 21 T16S , R21E

Tax Area Code  
94-002

56-47



**DISCLAIMER:**  
THIS IS NOT AN OFFICIAL MAP.  
THIS MAP WAS CREATED FOR THE IMPERIAL COUNTY  
ASSESSOR, FOR THE SOLE PURPOSE OF AIDING IN  
THE PERFORMANCE OF THE DUTIES OF THE ASSESSOR.  
ANY ERRORS OR OMISSIONS IN THIS MAP ARE NOT  
THE RESPONSIBILITY OF THE COUNTY OF IMPERIAL  
OR THE ASSESSOR. (REV. & TAX. CODE SEC.327)

BLOW - UP  
From 56-10  
7-12-90 LS  
2-10-93 LS

**ATTACHMENT D**  
**SITE PLAN**



**WESTCHESTER**  
TELECOM SERVICES

80 FOX GLEN  
BARBENTON, IL 60010  
TEL: 815.271.8900  
FAX: 815.271.8900  
www.westchester.com

**ZONING DRAWINGS**  
NOT FOR CONSTRUCTION

CHECKED BY: MN  
RSU

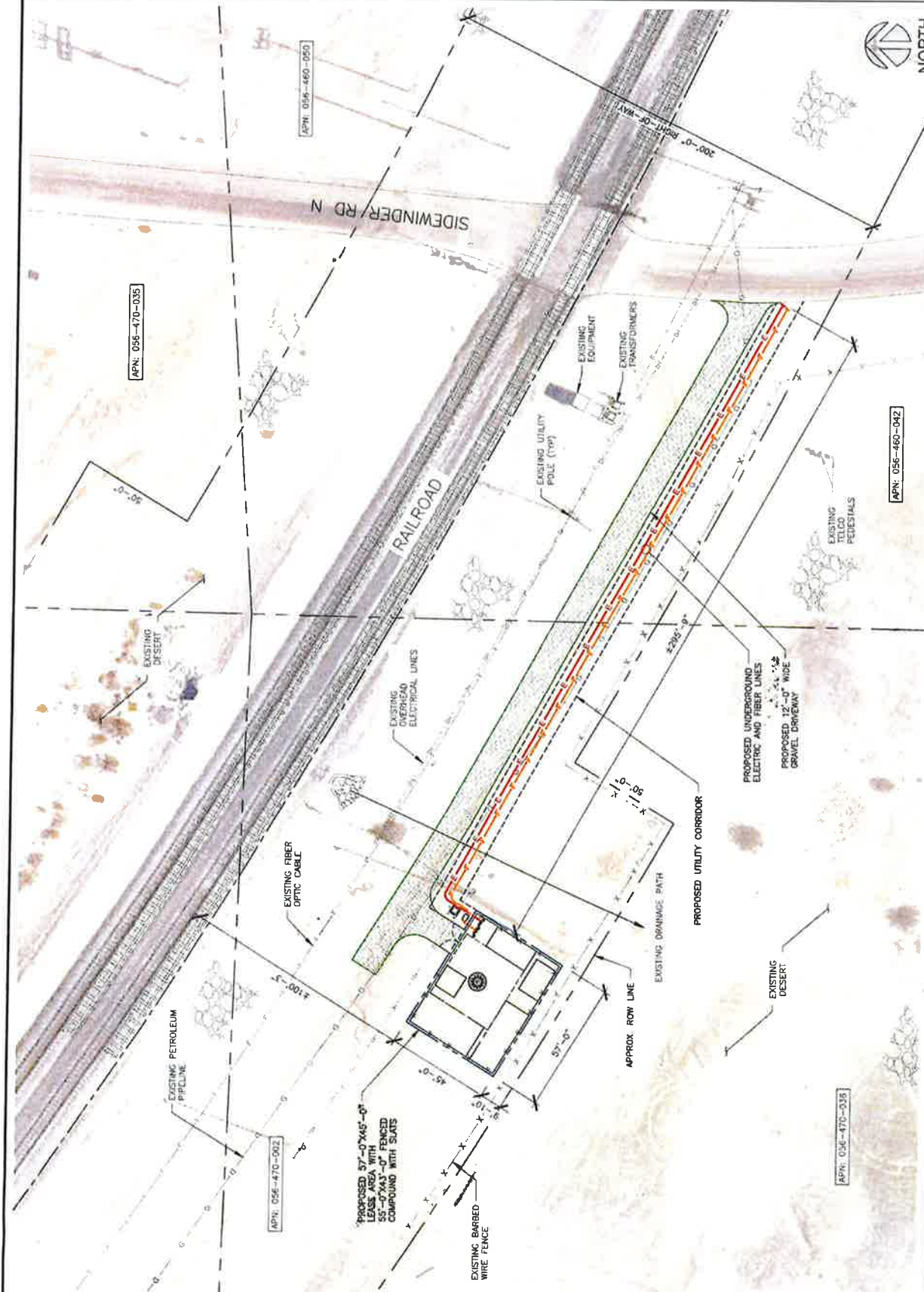
| REV | DATE     | DESCRIPTION     |
|-----|----------|-----------------|
| A   | 03/15/22 | ZONING DRAWINGS |
| B   | 03/29/22 | ZONING DRAWINGS |
| C   | 10/25/22 | ZONING DRAWINGS |

\* THESE DRAWINGS AND THESE PLANS ARE PREPARED BY WESTCHESTER TELECOM SERVICES AND SHALL BE A PART OF ANY PERMITS AND RECORDS OF THE STATE OF CALIFORNIA.

**SITE NAME:** WINTERHAVEN  
**SITE ADDRESS:** 637-639 SIDEWINDER RD N  
FELICITY, CA 92283  
IMPERIAL COUNTY

**SHEET TITLE:** OVERALL  
**SITE PLAN**

**SHEET NUMBER:** C-1



OVERALL SITE PLAN

SCALE: 1"=20'-0" (11/17)  
DATE: 10-25-22 (22030)

**ATTACHMENT E**  
**APPLICATION & SUPPORTING**  
**DOCUMENTS**

# CONDITIONAL USE PERMIT

I.C. PLANNING & DEVELOPMENT SERVICES DEPT.  
801 Main Street, El Centro, CA 92243 (760) 482-4236

- APPLICANT MUST COMPLETE ALL NUMBERED (black) SPACES - Please type or print -

|  |   |  |
|--|---|--|
| 1. PROPERTY OWNER'S NAME<br>CitySwitch (Lessee)  | EMAIL ADDRESS<br>info@cityswitch.com                                |  |
| 2. MAILING ADDRESS (Street / P O Box, City, State)<br>1900 Century Place NE, Suite 320, Atlanta, GA                          | ZIP CODE<br>30345   | PHONE NUMBER<br>404-857-0858                   |
| 3. APPLICANT'S NAME<br>Michael Bieniek, AICP / Allison R. Burke (Agents)   | EMAIL ADDRESS<br>mbieniek@loctel.com / aburke@shermanhoward.com     |  |
| 4. MAILING ADDRESS (Street / P O Box, City, State)<br>10700 W. Higgins, Ste 240, Rosemont, IL / 675 15th Ste 2300 Denver, CO | ZIP CODE<br>60018 / 80202   | PHONE NUMBER<br>847-287-1156 / 303-299-8045    |
| 4. ENGINEER'S NAME<br>Westchester Services, LLC - Glon L Hunt III  | CA LICENSE NO.  | EMAIL ADDRESS<br>ghunt@westchesterservices.com |
| 5. MAILING ADDRESS (Street / P O Box, City, State)<br>3470 W. Jasper Drive, Chandler, AZ                                     | ZIP CODE<br>85226   | PHONE NUMBER<br>602-403-8614                   |
| 6. ASSESSOR'S PARCEL NO<br>056-470-002   | SIZE OF PROPERTY (in acres or square feet)<br>Railroad right-of-way | ZONING (existing)<br>S-2                       |
| 7. PROPERTY (site) ADDRESS<br>Vacant railroad right-of-way 637-639 Sidewinder Rd N, Felcity, CA 92283                        |   |  |
| 8. GENERAL LOCATION (i.e. city, town, cross street)<br>Sidewinder Road, approximately 1,200' north of Interstate 8, Felcity  |   |  |
| 9. LEGAL DESCRIPTION<br>See attached lease agreement   |   |  |

## PLEASE PROVIDE CLEAR & CONCISE INFORMATION (ATTACH SEPARATE SHEET IF NEEDED)

|  |  |
|--|--|
| 10. DESCRIBE PROPOSED USE OF PROPERTY (list and describe in detail)                                    | Proposed 170' monopole tower with a 10'-0" lightning rod for a total height of 180'-0" to be located within a 57'-0" x 45' lease parcel. |
| 11. DESCRIBE CURRENT USE OF PROPERTY   | Railroad right-of-way  |
| 12. DESCRIBE PROPOSED SEWER SYSTEM   | N/a  |
| 13. DESCRIBE PROPOSED WATER SYSTEM   | N/a  |
| 14. DESCRIBE PROPOSED FIRE PROTECTION SYSTEM   | N/a  |
| 15. IS PROPOSED USE A BUSINESS?<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | IF YES, HOW MANY EMPLOYEES WILL BE AT THIS SITE?<br>No permanent employees   |

I, WE THE LEGAL OWNER (S) OF THE ABOVE PROPERTY CERTIFY THAT THE INFORMATION SHOWN OR STATED HEREIN IS TRUE AND CORRECT

Michael Bieniek, AICP 4/11/23  
Print Name Date  
Signature  
Allison R. Burke 4/11/23  
Print Name Date  
Signature

### REQUIRED SUPPORT DOCUMENTS

|              |       |
|--------------|-------|
| A. SITE PLAN | _____ |
| B. FEE       | _____ |
| C. OTHER     | _____ |
| D. OTHER     | _____ |

|   |             |                                  |
|---|-------------|----------------------------------|
| APPLICATION RECEIVED BY: _____  | DATE: _____ | REVIEW / APPROVAL BY             |
| APPLICATION DEEMED COMPLETE BY: _____   | DATE: _____ | <input type="checkbox"/> P W     |
| APPLICATION REJECTED BY: _____  | DATE: _____ | <input type="checkbox"/> E H S   |
| TENTATIVE HEARING BY: _____   | DATE: _____ | <input type="checkbox"/> A P C D |
| FINAL ACTION: <input type="checkbox"/> APPROVED <input type="checkbox"/> DENIED | DATE: _____ | <input type="checkbox"/> O E S   |

**CUP #**  
23-0010


# VARIANCE


I.C. PLANNING & DEVELOPMENT SERVICES DEPT.  
801 Main Street, El Centro, CA 92243 (760) 482-4236

- APPLICANT MUST COMPLETE ALL NUMBERED (black) SPACES - Please type or print -

|  |  |   |                              |
|--|--|---|------------------------------|
| 1. PROPERTY OWNER'S NAME<br>CitySwitch (Lessee)  |  | EMAIL ADDRESS<br>info@cityswitch.com                                |                              |
| 2. MAILING ADDRESS (Street / P O Box, City, State)<br>1900 Century Place NE, Suite 320, Atlanta, GA  |  | ZIP CODE<br>30345   | PHONE NUMBER<br>404-857-0858 |
| 3. ENGINEERS NAME<br>Westchester Services, LLC - Glen L. Hunt III  |  | CA LICENSE NO   |                              |
| 4. MAILING ADDRESS (Street / P O Box, City, State)<br>3740 W. Jasper Drive, Chandler, AZ   |  | EMAIL ADDRESS<br>ghunt@westchesterservices.com                      |                              |
|  |  | ZIP CODE<br>85226   | PHONE NUMBER<br>602-403-8614 |
| 5. ASSESSOR'S PARCEL NO.<br>056-470-002  |  | ZONING (existing)<br>S-2  |                              |
| 6. PROPERTY (site) ADDRESS<br>Vacant railroad right-of-way 637-639 Sidewinder Rd N, Felicity, CA 92283   |  | SIZE OF PROPERTY (in acres or square foot)<br>Railroad right-of-way |                              |
| 7. GENERAL LOCATION (i.e. city, town, cross street)<br>Sidewinder Road, approximately 1,200' north of Interstate 8, Felicity   |  |   |                              |
| 8. LEGAL DESCRIPTION<br>See attached lease agreement   |  |   |                              |
| 8. DESCRIBE VARIANCE REQUESTED (i.e. side yard set-back reduction, etc.)<br>for a communications tower is 100' <span style="float: right;">Maximum allowable height in the S-2 district</span> |  |   |                              |
| 9. DESCRIBE REASON FOR, OR WHY VARIANCE IS NECESSARY:  |  |   |                              |
| 10. DESCRIBE THE ADJACENT PROPERTY<br>East: <u>vacant parcel</u><br>West: <u>vacant parcel</u><br>North: <u>vacant parcel</u><br>South: <u>vacant parcel</u>                                   |  |   |                              |

IF WE THE LEGAL OWNER (S) OF THE ABOVE PROPERTY CERTIFY THAT THE INFORMATION SHOWN OR STATED HEREIN IS TRUE AND CORRECT

Michael Bioniek, AICP 4/11/23  
Print Name Date  
 Date  
Signature

Allison R. Burke 4/11/23  
Print Name Date  
 Date  
Signature

### REQUIRED SUPPORT DOCUMENTS

|   |           |       |
|---|-----------|-------|
| A | SITE PLAN | _____ |
| B | FEE       | _____ |
| C | OTHER     | _____ |
| D | OTHER     | _____ |

|                                |                                   |                                 |       |                                |                                  |
|--------------------------------|-----------------------------------|---------------------------------|-------|--------------------------------|----------------------------------|
| APPLICATION RECEIVED BY        | _____                             | DATE                            | _____ | REVIEW / APPROVAL BY           | _____                            |
| APPLICATION DEEMED COMPLETE BY | _____                             | DATE                            | _____ | OTHER DEPT'S required          | <input type="checkbox"/> P W     |
| APPLICATION REJECTED BY        | _____                             | DATE                            | _____ | <input type="checkbox"/> E H S | <input type="checkbox"/> A P C D |
| TENTATIVE HEARING BY           | _____                             | DATE                            | _____ | <input type="checkbox"/> O E S | <input type="checkbox"/> _____   |
| FINAL ACTION                   | <input type="checkbox"/> APPROVED | <input type="checkbox"/> DENIED | DATE  | _____                          | <input type="checkbox"/> _____   |

V #  
23-004

**RECEIVED**

APR 12 2022

IMPERIAL COUNTY  
PLANNING & DEVELOPMENT SERVICES



Sherman & Howard L.L.C.



APPLICATION FOR CONDITIONAL USE PERMIT AND HEIGHT VARIANCE  
APPROVAL FOR  
THE PROPOSED COMMUNICATION FACILITY AT

637-639 SIDEWINDER RD N  
FELICITY, CA 92283  
APN: 056-470-002

CITYSWITCH SITE NAME / # – WINTERHAVEN CAC002  
AT&T SITE NUMBER - 1010309

**RECEIVED**

APR 12 2022

# Letter of Application

IMPERIAL COUNTY  
PLANNING & DEVELOPMENT SERVICES

April 3, 2023

Mr. Jim Minnick  
Planning & Development Services Director, Imperial County  
801 W. Main Street  
El Centro, CA 92243

RE: Proposed CitySwitch Communications Facility – Winterhaven CAC002  
AT&T Site - 10101309  
637-639 Sidewinder Rd N  
APN 056-470-002  
Felicity, CA 92283

Dear Mr. Minnick:

LCC Telecom Services and Sherman & Howard L.L.C. represent CitySwitch. CitySwitch has finalized an agreement with the property owners of the site referenced above to develop and construct a Communications Facility that will be available to be used by wireless carriers. The proposed shared use facility is designed to house the equipment necessary to provide clear and uninterrupted wireless telecommunications services to the residents and visitors of Imperial County.

This proposed Communications Facility is being constructed pursuant to Sections 92402.01 and 92405.01 of the Imperial County Land Use Code (the "Code"). The proposed facility will consist of a 170'-0" tall monopole tower with a 10'-0" lightning rod for a total height of 180'-0" to be located within a 57'-0" x 45'-0" lease parcel. The proposed tower will be erected, owned, and operated by CitySwitch. CitySwitch has a commitment with Union Pacific and AT&T Mobility, a wireless services provider, for this site. Additionally, the facility will be open for co-location to other wireless providers.

The proposed Communications Facility is located in an S-2, Open Space/Preservation zone. Pursuant to Section 90519.02(d) of the Code, Communications Facilities are allowed in this district with a Conditional Use Permit approval. Communications Facilities exceeding the maximum allowable height are allowed in this district with Variance approval.

On behalf of the applicant CitySwitch, LCC Telecom Services and Sherman & Howard have submitted all required documentation for the proposed tower in accordance with Section 92402.01 of the Code for this application to be deemed complete. Should you have any questions please feel free to contact me. I look forward to working with you during the review and approval process. CitySwitch looks forward to helping provide Imperial County with improved wireless coverage.

Sincerely,

56620967.1



## Application Materials

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56200671

## SITE PLAN REQUIREMENTS

### PLAN MUST:

- a. Be drawn to scale upon substantial paper, 11" x 14" (min.) – (20 copies must be submitted.)
- b. Show name of owner, legal description and Assessor's Parcel Number.
- c. Show existing property dimensions, size, adjacent roads, canals, right-of-ways, easements, etc.
- d. Show all existing and proposed structures (both above and below ground) location of sewer and water systems.
- e. Show adjacent property uses and approximate distances to nearest structures.
- f. Indicate name of person preparing site plan.
- g. Show North orientation.
- h. Show sufficient dimensions and information for proper evaluation to be done.

**CAUTION:** Incomplete or inaccurate applications, plans will cause the entire application to be rejected.

## SITE PLAN REQUIREMENTS

### PLAN MUST:

- a. be drawn to scale upon substantial paper, 11" x 14" (min.) – (20 copies must be submitted).
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# U.S. TITLE SOLUTIONS

100 Corporate Drive, Suite 305, Lebanon, NJ 08833

Phone (908) 849-3011 Fax (908) 849-7981

[www.ustitlesolutions.com](http://www.ustitlesolutions.com)

**REPORT OF TITLE  
Document Research and Retrieval  
U.S. Title Solutions File No. UST71006  
Reference No. Brawley  
Site Name: Brawley**

**Prepared For:** LCC Telecom Services, LLC -

**Premises:** TBD, Brawley, CA 92227

**Parcel:** 056-470-002

**County:** Imperial

**REPORT POWERED BY LAND-IT™**

This Report of Title is for informational purposes only. It is not a representation of the condition of title to real property. It is not an abstract, legal opinion, opinion of title, or any form of title insurance. This report is issued exclusively for the benefit of the applicant therefore, and may not be relied upon by any other person. The liability of U.S. Title Solutions is limited to the amount of the fee paid therefore.

**U.S. TITLE SOLUTIONS**  
**File No. UST71006 Reference No. Brawley**

**REPORT OF TITLE**  
**SCHEDULE - II**

**(LEGAL DESCRIPTION)**

A survey is required for an accurate metes and bounds description.

**U.S. TITLE SOLUTIONS**  
**File No. UST71006 Reference No. Brawley**

**REPORT OF TITLE**  
**SCHEDULE - V**

**(OWNERSHIP HISTORY)**

1. Property card made by Property Card to Southern Pacific Company , in [Instrument No: Property Detail Report.](#)

**Notes:** Searcher advised no vesting deed or patent could be found of record for subject property or grantee. The Imperial County Assessor's Office found old SBE maps that shows the Southern Pacific Railroad being in Section 21 Township 16S Range 21E using the corresponding SBE numbers (872-13-9-3).

For reference only, [Instrument No: SBE Map](#) , attached has the U.S. Government as Grantor and Southern Pacific R.R. Co. as Grantee. Under the remarks, it states "Acquired for station grounds under section 8 of the Act of Congress of Mar. 3 1871" which under this act, is believed to have authorized the Southern Pacific Railroad Company of California to construct a certain line of railroad and granted certain lands.

# Property Detail Report

CA

APN: 056-470-002-000

Imperial County Data as of: 12/29/2021

## Owner Information

Owner Name: Southern Pacific Co  
Vesting: Corporation  
Mailing Address:

Occupancy: Unknown

## Location Information

|   |   |                                    |
|---|---|------------------------------------|
| Legal Description: Por Sbe 872-13-9-3 Of Sec 21 16-21 | County: Imperial, CA                        |                                    |
| APN: 056-470-002-000                                  | Alternate APN: 0564700201                   | Census Tract / Block:              |
| Munic / Twnshp:                                       | Twnshp-Rng-Sec:                             | Legal Lot / Block:                 |
| Subdivision:  | Tract #:                                    | Legal Book / Page:                 |
| Neighborhood:   | School District: San Pasqual Valley Unified | High School: San Pasqual Valley... |
| Elementary School: San Pasqual Valley...              | Middle School: San Pasqual Middle           |                                    |
| Latitude: 32.75386                                    | Longitude: -114.76022                       |                                    |

## Last Transfer / Conveyance - Current Owner

|                      |              |                 |
|----------------------|--------------|-----------------|
| Transfer / Rec Date: | Price:       | Transfer Doc #: |
| Buyer Name:          | Seller Name: | Deed Type:      |

## Last Market Sale

|                     |                      |                    |
|---------------------|----------------------|--------------------|
| Sale / Rec Date:    | Sale Price / Type:   | Deed Type:         |
| Multi / Split Sale: | Price / Sq. Ft.:     | New Construction:  |
| 1st Mtg Amt / Type: | 1st Mtg Rate / Type: | 1st Mtg Doc #: N/A |
| 2nd Mtg Amt / Type: | 2nd Mtg Rate / Type: | Sale Doc #: N/A    |
| Seller Name:        |                      | Title Company:     |
| Lender:             |                      |                    |

## Prior Sale Information

|                     |                      |                       |
|---------------------|----------------------|-----------------------|
| Sale / Rec Date:    | Sale Price / Type:   | Prior Deed Type:      |
| 1st Mtg Amt / Type: | 1st Mtg Rate / Type: | Prior Sale Doc #: N/A |
| Prior Lender:       |                      |                       |

## Property Characteristics

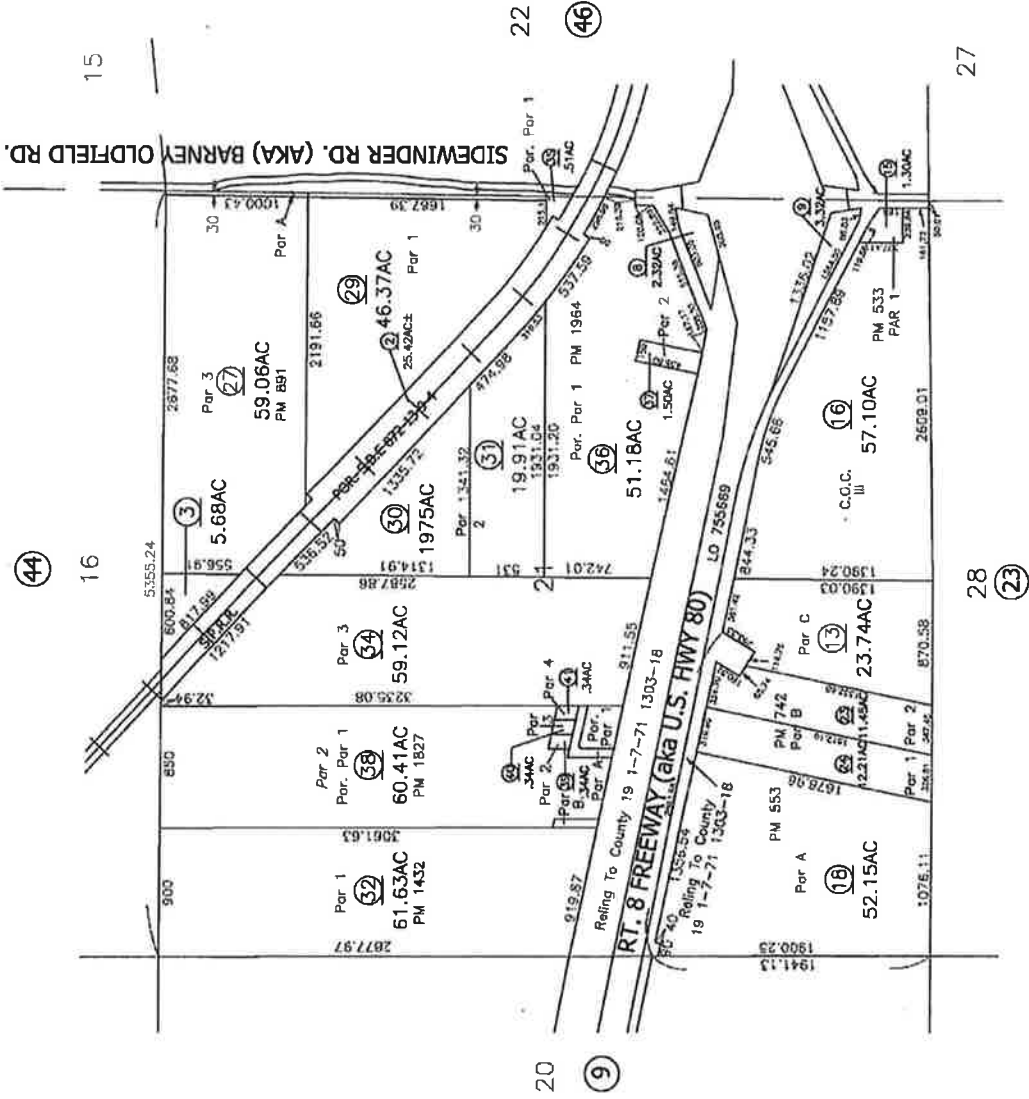
|                    |                    |                   |
|--------------------|--------------------|-------------------|
| Gross Living Area: | Total Rooms: 0     | Year Built / Eff: |
| Living Area:       | Bedrooms:          | Stories:          |
| Total Adj. Area:   | Baths (F / H):     | Parking Type:     |
| Above Grade:       | Pool:              | Garage #:         |
| Basement Area:     | Fireplace:         | Garage Area:      |
| Style:             | Cooling:           | Porch Type:       |
| Foundation:        | Heating:           | Patio Type:       |
| Quality:           | Exterior Wall:     | Roof Type:        |
| Condition:         | Construction Type: | Roof Material:    |

## Site Information

|  |                             |                            |
|--|-----------------------------|----------------------------|
| Land Use: Public School                      | Lot Area: 1,165,230 Sq. Ft. | Zoning:                    |
| State Use:                                   | Lot Width / Depth:          | # of Buildings:            |
| County Use: 604 - Schools                    | Usable Lot:                 | Res / Comm Units:          |
| Site Influence:                              | Acres: 26.75                | Water / Sewer Type:        |
| Flood Zone Code: A                           | Flood Map #: 06025C1875C    | Flood Map Date: 09/26/2008 |
| Community Name: Fort Yuma Indian Reservation | Flood Panel #: 1875C        | Inside SFHA: True          |

## Tax Information

|                     |                    |                     |
|---------------------|--------------------|---------------------|
| Assessed Year: 2021 | Assessed Value:    | Market Total Value: |
| Tax Year:           | Land Value:        | Market Land Value:  |
| Tax Area: 94-002    | Improvement Value: | Market Imprv Value: |
| Property Tax:       | Improved %:        | Market Imprv %:     |
| Exemption:          | Delinquent Year:   |                     |



**DISCLAIMER:**  
 THIS IS NOT AN OFFICIAL MAP.  
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 ASSESSOR, FOR THE SOLE PURPOSE OF AIDING IN  
 THE PERFORMANCE OF THE DUTIES OF THE ASSESSOR.  
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 OR THE ASSESSOR. (REV. & TAX CODE SEC-327)

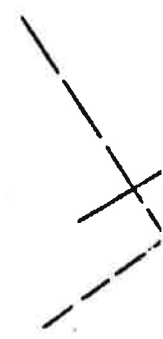
BLOW - UP  
 From 56-10  
 7-12-90 LS  
 2-10-93 LS 8-28-12 MF



**SCHEDULE OF PROPERTY**

| No.      | GRANTOR                       | GRANTEE                   | INSTRUMENT                       | DATE          | RECORD | Custb. No. | AREA    |                             |
|----------|-------------------------------|---------------------------|----------------------------------|---------------|--------|------------|---------|-----------------------------|
|          |                               |                           |                                  |               |        |            | SQ. FT. | ACRES                       |
| 1        | U.S. Government               | Southern Pacific R.R. Co. | Act of Cong.                     | Mar. 3 1871   |        |            | 182,128 |                             |
| 2        | State of California           | "                         | A.B. Inc. Act<br>Sec 474 C. Code | May 20 1861   |        |            | 3,882   |                             |
| 3        |                               |                           |                                  |               |        |            | 5,203   | No record &<br>See Note N   |
| 4        | U.S. Government               | Southern Pacific R.R. Co. | Act of Cong.                     | Mar. 3-1875   |        |            |         | See Note N                  |
| 5        | "                             | "                         | " " "                            | Mar 2-1899    |        |            |         | See Note 1                  |
|          | U.S. Gov. (Dept. of the Int.) | Southern Pacific R.R. Co. | Schedule                         | May 19-1910   |        | 10442      |         | Covers and<br>above Part    |
| U. 2d. 3 |                               |                           |                                  |               |        |            |         |                             |
| U. 4     | S.P.R.R. Co.                  | U.S. Government           | Relinquishment                   | Nov. 24, 1928 |        | 37725      |         | See Remark<br>32,565 ac. re |
| U. 5     |                               |                           |                                  |               |        | 37363      |         | See Note N                  |
|          |                               |                           |                                  |               |        |            |         |                             |
|          |                               |                           |                                  |               |        |            |         |                             |
|          |                               |                           |                                  |               |        |            |         |                             |
|          |                               |                           |                                  |               |        |            |         |                             |
|          |                               |                           |                                  |               |        |            |         |                             |
|          |                               |                           |                                  |               |        |            |         |                             |
|          |                               |                           |                                  |               |        |            |         |                             |
|          |                               |                           |                                  |               |        |            |         |                             |
|          |                               |                           |                                  |               |        |            |         |                             |

Note No. 1: Acquired for station grounds under section 8 of the Act of Congress of Mar. 3, 1871. See letter C.F.R. Ogilby to Guy &  
 Note No. 2: The 32,565 ac. previously shown as Par. 4 has been eliminated acct. Relinquishment of land as per deed Audit 37725 below  
 Note No. 3: The 12,626 ac. previously shown in area column have been eliminated and shown hatched as per deed Audit 37963 below  
 Note No. 4: 166,565 ac. lost; 12,626 ac. acqd. by Par. 5 this map; 153,939 ac. acqd. by Par. 8, Map 18, letter Gup V. Shoup to G.W. Boschke d

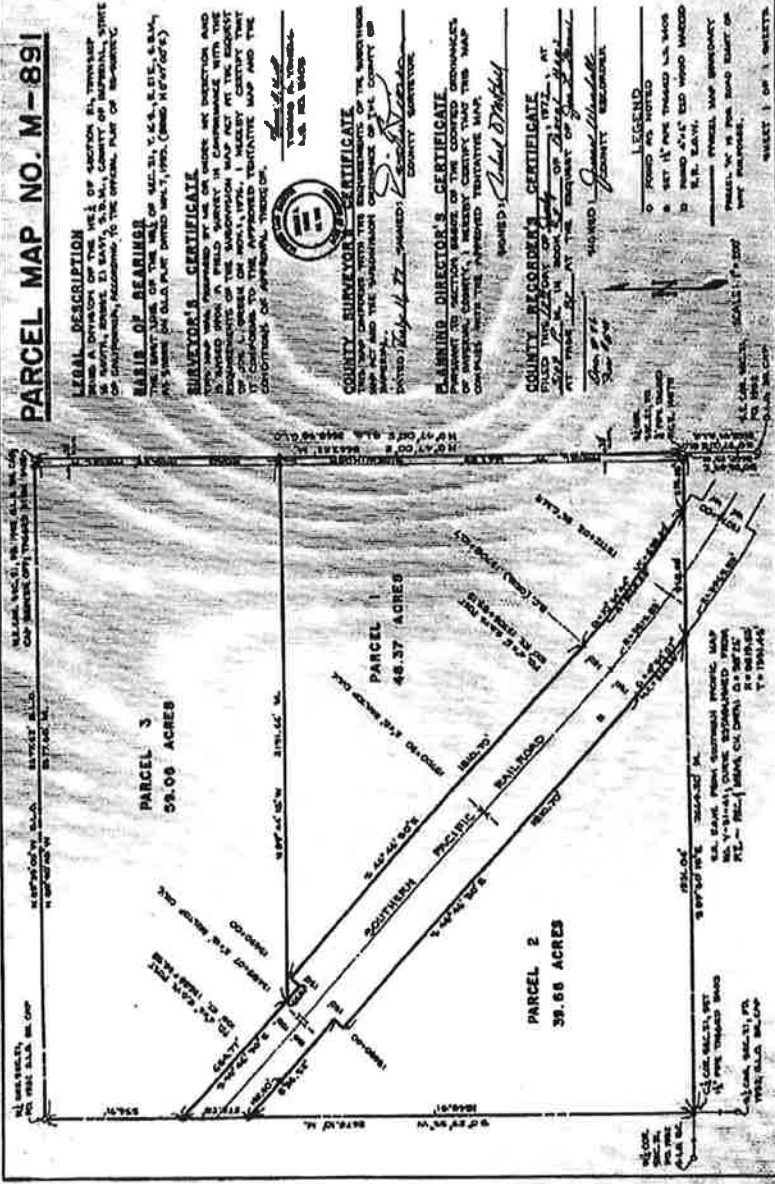


**SCHEDULE OF PROPERTY**

| INSTRUMENT              | DATE               | RECORD | Custd No | AREA         |       | REMARKS  |
|-------------------------|--------------------|--------|----------|--------------|-------|--|
|                         |                    |        |          | SQ. FT.      | ACRES |  |
| 1. Act of Cong.         | Mar. 3 1871        |        |          | 182,122      |       |  |
| <i>A.R. Inc. Act</i>    | <i>May 20 1861</i> |        |          | <i>3,922</i> |       |  |
| <i>Sec 414 C. Conf.</i> |                    |        |          |              |       |  |
| 2. Act of Cong.         | Mar. 3-1875        |        |          | 5,262        |       | No record at hand. See Note No. 1  |
| " "                     | Mar. 2-1899        |        |          |              |       | See Note No. 1 and No. 2   |
| " "                     |                    |        |          |              |       | See Note No. 3   |
| 3. Schedule             | May 19-1910        |        | 10442    |              |       | Covers award made by appraisers for above Parcel, and Grant of Right of Way. |
|                         |                    |        |          |              |       |  |
| Relinquishment          | Nov. 24, 1928      |        | 37725    |              |       | See Remarks for Par. 3.  |
|                         |                    |        | 37363    |              |       | 32.645 ac. relinquished.   |
|                         |                    |        |          |              |       | See Note No. 4   |
|                         |                    |        |          |              |       |  |
|                         |                    |        |          |              |       |  |
|                         |                    |        |          |              |       |  |
|                         |                    |        |          |              |       |  |

*Par. section 8 of the Act of Congress of Mar. 3, 1871. See letter C.F.R. Ogilby to Guy V. Shoup dated May 14, 1926.*  
*Par. 4 has been eliminated acct. Relinquishment of land as per deed Audit 37725 below.*  
*Par. 5 this map; 153,939 ac. acqd. by Par. 8, Map 18, letter Guy V. Shoup to G.W. Boschke dated Apr. 26, 1928; A.F.E. 82854-5-14-29*

# PARCEL MAP NO. M-891



**LEGAL DESCRIPTION**  
 BEING A DIVISION OF THE NE 1/4 OF SECTION 24, TOWNSHIP 23 NORTH, RANGE 23 EAST, S.E. 1/4, COUNTY OF WASHINGTON, STATE OF MISSISSIPPI, ACCORDING TO THE OFFICIAL PARCEL MAP OF MISSISSIPPI

**BASIS OF BEARINGS**  
 THE BEARINGS OF THE WALL OF SECTION 24, TOWNSHIP 23 NORTH, RANGE 23 EAST, S.E. 1/4, ARE BASED ON THE MERIDIAN OF GREENWICH, 1880 (BIRD HEAVENS)

**SURVEYOR'S CERTIFICATE**  
 I HEREBY CERTIFY THAT I AM AN UNDER NO OBJECTION AND IN ACCORDANCE WITH THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT AND THE SUPERVISION OF THE COUNTY OF WASHINGTON, I HAVE CONDUCTED A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT AT THE REQUEST OF THE COUNTY SURVEYOR, AND THAT THE PARCEL MAP IS IN ACCORDANCE WITH THE APPROVED TENTATIVE MAP AND THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT.



**COUNTY SURVEYOR'S CERTIFICATE**  
 I HEREBY CERTIFY THAT THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT AND THE SUPERVISION OF THE COUNTY OF WASHINGTON, I HAVE CONDUCTED A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT AT THE REQUEST OF THE COUNTY SURVEYOR, AND THAT THE PARCEL MAP IS IN ACCORDANCE WITH THE APPROVED TENTATIVE MAP AND THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT.

**PLANNING DIRECTOR'S CERTIFICATE**  
 I HEREBY CERTIFY THAT THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT AND THE SUPERVISION OF THE COUNTY OF WASHINGTON, I HAVE CONDUCTED A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT AT THE REQUEST OF THE COUNTY SURVEYOR, AND THAT THE PARCEL MAP IS IN ACCORDANCE WITH THE APPROVED TENTATIVE MAP AND THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT.

**COUNTY RECORDER'S CERTIFICATE**  
 I HEREBY CERTIFY THAT THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT AND THE SUPERVISION OF THE COUNTY OF WASHINGTON, I HAVE CONDUCTED A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT AT THE REQUEST OF THE COUNTY SURVEYOR, AND THAT THE PARCEL MAP IS IN ACCORDANCE WITH THE APPROVED TENTATIVE MAP AND THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT.

**PLANNING DIRECTOR'S CERTIFICATE**  
 I HEREBY CERTIFY THAT THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT AND THE SUPERVISION OF THE COUNTY OF WASHINGTON, I HAVE CONDUCTED A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT AT THE REQUEST OF THE COUNTY SURVEYOR, AND THAT THE PARCEL MAP IS IN ACCORDANCE WITH THE APPROVED TENTATIVE MAP AND THE REQUIREMENTS OF THE MISSISSIPPI PARCEL MAP ACT.

1b RECORDING REQUESTED BY  
and RETURN TO:  
C. I. Corporation System  
239 Montgomery Street  
San Francisco, California 94104

47 JOHN V. KERNERSON  
COURT RECORDER

'69 DEC 9 AM 11:10  
BOOK 1286 PAGE 821

OFFICIAL  
COURT  
47



Office of Secretary of State

*J. Eugene Bunting, Secretary of State of the State of Delaware,*

**do hereby certify** that the Certificate of Agreement of Merger of the "SOUTHERN PACIFIC COMPANY", merging with and into the "SOUTHERN PACIFIC TRANSPORTATION COMPANY", under the name of "SOUTHERN PACIFIC TRANSPORTATION COMPANY", was received and filed in this office the twenty-sixth day of November, A.D. 1969, at 8:35 o'clock A.M.

And I do hereby further certify that the aforesaid Corporation is duly incorporated under the laws of the State of Delaware and is in good standing and has a legal corporate existence so far as the records of this office show and is duly authorized to transact business.

**In Testimony Whereof, I have hereunto set my hand**

and official seal at Dover this second day of December in the year of our Lord one thousand nine hundred and sixty-nine.



*Eugene Bunting*

Secretary of State

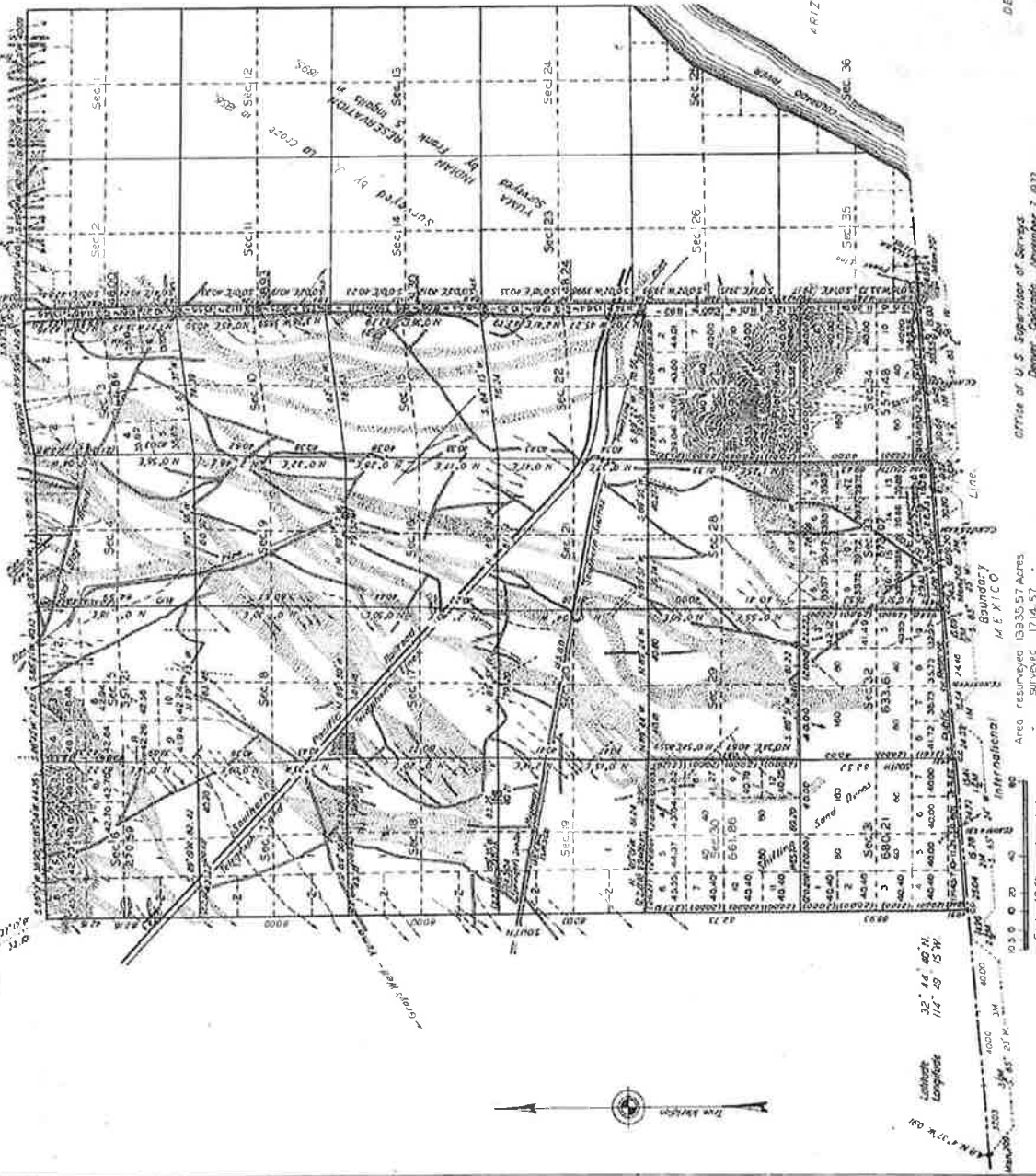
*R. H. Caldwell*

Acting Secretary of State

DUPLICATE

TOWNSHIP N° 16 SOUTH, RANGE N° 21 EAST, SAN BERNARDINO MERIDIAN, CALIFORNIA.  
DEPENDENT AND INDEPENDENT RESURVEY AND SURVEY

34, 35  
T. S. R. 202



34, 35  
T. S. R. 202

The part of the survey of Secs. 1 to 24, incl. 15 to 22, inc. 23, and 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, lines of the original survey as shown upon the plat approved February 6, 1857, in their true original position according to the best available evidence of the parties to the same, and of the original plat and these derived in the retracement have been distributed proportionally between accepted corners and unaccepted corners, except where the retracement shows a discrepancy which can be made to the original plat for the showing of the areas and more detailed descriptions of the various smaller subdivisions.

1526922  
DUPLICATE PLAT  
The following stipulations are made a part of this plat:  
Noted with later date  
From SUPERVISOR  
Printed in Duplicate by H. H. C. Co.  
Pat. filed by said land office  
A. S. No. 1526922, 1526923, 1526924

DEPARTMENT OF THE INTERIOR  
GENERAL LAND OFFICE  
Washington, D. C., April 10, 1934  
The above plat of Township N° 16 South, Range N° 21 East, of the San Bernardino Meridian, California, is strictly conformable to the field notes of the survey thereon which have been examined and approved.  
D. T. Jones  
Acting Assistant Commissioner

Office of U. S. Supervisor of Springs  
Denver, Colorado, March 7, 1933  
The above plat of Township N° 16 South, Range N° 21 East, of the San Bernardino Meridian, California, is strictly conformable to the field notes of the survey thereon which have been examined and approved.  
W. H. Jones  
U. S. Supervisor of Springs

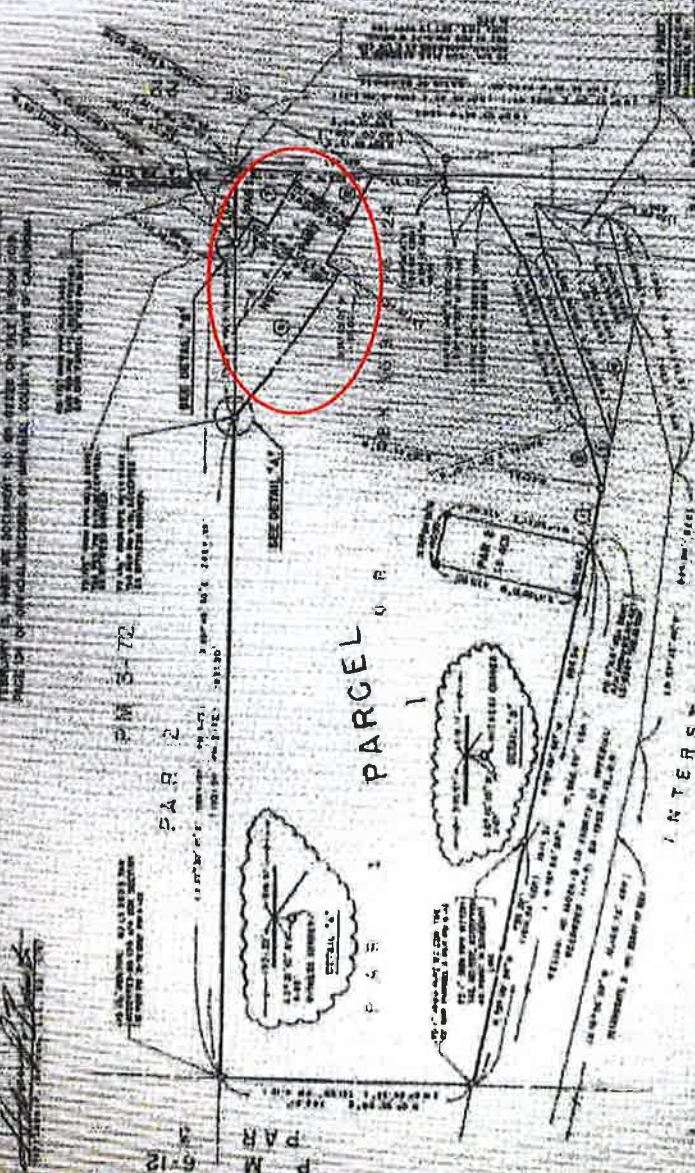
| LINES DESIGNATED BY WHOM SURVEYED | GROUP | RELEASE DATE | MILES |        | ACRES | COMPLETES |
|-----------------------------------|-------|--------------|-------|--------|-------|-----------|
|                                   |       |              | INT.  | EXTER. |       |           |
| J. La Craze                       | 1     | 12           | 12    | 12     | 12    | 12        |
| John L. Worboys                   | 2     | 4.4          | 4.4   | 4.4    | 4.4   | 4.4       |
| Miscellaneous                     | 3     | 5.37         | 5.37  | 5.37   | 5.37  | 5.37      |
| Total                             |       |              | 21.77 | 21.77  | 21.77 | 21.77     |

Area resurveyed 13935.57 Acres  
Surveyed 1714.57

PM 8-31

# PARCEL MAP No. M 1964

SECTION 18, T. 10 N., R. 10 W., S. 100.00' x 100.00' (APPROXIMATE)  
SECTION 19, T. 10 N., R. 10 W., S. 100.00' x 100.00' (APPROXIMATE)



**ACRESAGE**

TRACT 1: 0.478 A.C.  
 TRACT 2: 0.478 A.C.  
 TRACT 3: 0.478 A.C.  
 TRACT 4: 0.478 A.C.  
 TRACT 5: 0.478 A.C.  
 TRACT 6: 0.478 A.C.  
 TRACT 7: 0.478 A.C.  
 TRACT 8: 0.478 A.C.  
 TRACT 9: 0.478 A.C.  
 TRACT 10: 0.478 A.C.

| TRACT NO. | ACRES | FRONT FEET | DEPTH FEET | AREA SQ. FT. |
|-----------|-------|------------|------------|--------------|
| 1         | 0.478 | 100.00     | 47.80      | 4780.00      |
| 2         | 0.478 | 100.00     | 47.80      | 4780.00      |
| 3         | 0.478 | 100.00     | 47.80      | 4780.00      |
| 4         | 0.478 | 100.00     | 47.80      | 4780.00      |
| 5         | 0.478 | 100.00     | 47.80      | 4780.00      |
| 6         | 0.478 | 100.00     | 47.80      | 4780.00      |
| 7         | 0.478 | 100.00     | 47.80      | 4780.00      |
| 8         | 0.478 | 100.00     | 47.80      | 4780.00      |
| 9         | 0.478 | 100.00     | 47.80      | 4780.00      |
| 10        | 0.478 | 100.00     | 47.80      | 4780.00      |

THIS MAP WAS PREPARED BY THE SURVEYOR OF THE COUNTY OF TARRANT, TEXAS, AND IS SUBJECT TO THE REVISIONS AND AMENDMENTS WHICH MAY BE MADE BY HIM AT ANY TIME.



*[Signature]*  
 SURVEYOR OF TARRANT COUNTY, TEXAS

APPROVED AND CORRECTED:  
 27 April 1964  
*[Signature]*  
 COUNTY CLERK, TARRANT COUNTY, TEXAS

NOTICE TO CREDITORS:  
 NOTICE TO CREDITORS OF THE ESTATE OF [Name], DECEASED, TO FILE CLAIMS AGAINST THE ESTATE OF SAID DECEASED, WITHIN THE TIME AND PLACE HEREIN SPECIFIED.

NOTICE TO CREDITORS:  
 NOTICE TO CREDITORS OF THE ESTATE OF [Name], DECEASED, TO FILE CLAIMS AGAINST THE ESTATE OF SAID DECEASED, WITHIN THE TIME AND PLACE HEREIN SPECIFIED.

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 NOTICE TO CREDITORS OF THE ESTATE OF [Name], DECEASED, TO FILE CLAIMS AGAINST THE ESTATE OF SAID DECEASED, WITHIN THE TIME AND PLACE HEREIN SPECIFIED.



## Indian Appropriations Act (1871)



### Indian Appropriations Act (1871)

In what was supposed to be a routine bill providing funds to Indian Agencies, the Indian Appropriations Act of 1871 included a significant clause declaring that indigenous people did not belong to "independent nations" and could therefore not enter treaties with the United States. A departure from previous US-Indigenous relations, the Act dealt a major blow to Indigenous sovereignty.

The Indian Appropriations Act of 1871 declared that Indigenous people were no longer considered members of "sovereign nations" and that the US government could no longer establish treaties with them. The act effectively made Native Americans wards of the US government and paved the way for other laws that granted the federal government increased power over the land and lives of Indigenous peoples. Although it promised not to "invalidate or impair the obligation" of previous treaties, the act was the first step toward the elimination of Indigenous sovereignty, which was completed in 1898 with the Curtis Act, and the invalidation of previous treaty obligations, a power finally granted to Congress in 1903. One of the first arrangements to be made in the post-treaty era was the Brunot Agreement, in which Utes under Ouray ceded Colorado's San Juan Mountains to the United States.

### Origins

Unlike other Indian Appropriations Acts, most of which served the mundane purpose of allocating federal funds to fulfill treaty obligations, the Appropriations Act of 1871 marked a major shift in federal Indigenous policy. Nearly a century earlier, immediately after the nation was established, President George Washington applied the president's treaty-making power to Indigenous nations, setting a precedent for nation-to-nation diplomacy.

Appropriations Act, Congress assumed the right to legislate on all matters concerning Indigenous affairs as it saw fit. By breaking up spiritually and culturally significant land that had been held collectively for generations, the Dawes Act dealt another crippling blow to Indigenous sovereignty in the late nineteenth century.

### Legacy

By the end of the nineteenth century, indigenous nations within the United States had gone from having the rights due any other foreign country to having almost no right to exist. This process had been under way before 1871, but the Indian Appropriations Act of that year incorporated it into official government policy, opening the door for its rapid acceleration.

While no new treaties have been written since 1871, Congress did eventually restore some measure of Indigenous sovereignty in 1934 with the **Indian Reorganization Act (IRA)**. However, because it forced tribes to hold votes and write their own Constitutions, many tribes correctly viewed the IRA as another government mandate. Even though most federally recognized tribes today have some form of self-government, the fight for Indigenous sovereignty denied in the 1871 Act continues. In New Mexico, for example, Indigenous people are resisting government-sponsored energy drilling near sacred sites on public land; in North Dakota they have protested government-imposed oil pipelines across treaty-protected land. Meanwhile, in Alaska and Colorado, tribes are lobbying for the power and resources to combat disproportionately high rates of sexual assault and other violent crime on federal reservations.

### Author

#### Encyclopedia Staff

### References

"An Act Making Appropriations for the Current and Contingent Expenses of the Indian Department..." (Indian Appropriations Act), 41st Congress, Sess. III, Ch. 119–120, March 3, 1871.

Antoine, v. Washington, 420 US 194 (1975).

Jeff Brady, "2 Years After Standing Rock Protests, Tensions Remain but Oil Business Booms," NPR, November 29, 2018.

Susan Montoya Bryan, "Protecting the 'Incredible, Magical, Spiritual' That Is Chaco Canyon," Associated Press and *Indian Country Today*, October 30, 2019.

Joaquin Estus, "The Fix for Alaska's Public Safety Crisis? Recognize Tribal Powers," *Indian Country Today*, October 30, 2019.

Richard Harless, "Native American Policy," George Washington's Mount Vernon, n.d.

Mark G. Hirsch, "1871: The End of Indian Treaty-Making," *American Indian Magazine* 15, no. 2 (Summer/Fall 2014).

Phillip M. Kanman, "Reinstating Treaty-Making with Native American Tribes," *William and Mary Bill of Rights Journal* 16, no. 3 (2008).

Alysa Landry, "Ulysses S. Grant: Mass Genocide Through 'Permanent Peace' Policy," *Indian Country Today*, May 3, 2016.

Lone Wolf v. Hitchcock, 187 US 553 (1903).

Jim Mimiaga, "Meeting Addresses Ute Mountain Ute Tribe Plans; Ute Mountain Looks to Hemp, More Officers," *Journal/Cortez, CO*, October 14, 2019.

Worcester v. Georgia, 31 US 515 (1832).

### Additional Information

<https://coloradoencyclopedia.org/article/indian-appropriations-act-1871>



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### Opinion Case details

built was accepted by the president, and has performed, to the satisfaction of the government, all the services required of it under said act. Held, that said consolidated company if not, technically, is, substantially, the same company to which said act referred. *Affirming Railroad Co. v. Poole*, 12 Sawy. 544, 32 F. 451; *U.S. v. Railroad Co., and U.S. v. Cotton, etc., Co.*, 45 F. 596.

Pursuant to state authority, recognized by and made a part of the congressional grant of March 3, 1871, the S.P.R.R. Co., April 15, 1871, filed 684 amended articles of '684 incorporation; and August 12, 1873, filed, together with the S.P. Branch R.R. Co., articles of amalgamation and consolidation, under the name of the S.P.R.R. Co. Held, that while in one sense a new corporation was formed, each was substantially and practically the same S.P.R.R. Co. mentioned in the acts of congress, and was so recognized by congress, and that the articles of amendment, amalgamation and consolidation were authorized by congressional as well as by state legislation.

Commissioners having from time to time been appointed to report in regard to the construction of the Southern Pacific Railroad, the road having been accepted by the president, and having been used by the government in the transportation of mail, military stores, etc. Held, that these acts were acts recognizing the defendant company as the S.P.R.R. Co. to which the act of March 3, 1871, applies, and that the defendant company, being subject to burdens imposed by the act, is entitled to the benefits conferred by it as a consideration for those burdens.

Act Cong. July 27, 1866, having expressly granted lands to the S.P.R.R. Co., its successors and assigns, it is held, that if the consolidated company, with the amended articles of incorporation, is not technically the same corporation, referred to in act March 3, 1871, it is within the express provisions of the grant, being the successor or assign of said company.

Inchoate grants were not contemplated by con

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Opinion Case details of the grant.

W. H. H. Miller, Atty. Gen., Willoughby Cole, U.S. Atty., and Joseph H. Call, Sp. Asst. U.S. Atty.

Joseph D. Redding and Chapman & Hendrick, for defendants.

685 Before SAWYER, Circuit Judge, and ROSS, District Judge. \*685 SAWYER, J.

These are suits brought against the Southern Pacific Railroad Company, and parties who have purchased the land described, and derived title thereto from the Southern Pacific Railroad Company, to determine the adverse claim of title to said lands and to restrain defendants from cutting timber thereon, or from hereafter setting up any claim of title to said lands. The lands involved in suit No. 177 are sections 1, 11, and 13 of township 3, and section 35 of township 4 N., of range 15 W., San Bernardino meridian; and those in suit No. 178, section 23, township 4 N., range 15 W., same meridian. These lands are claimed by defendants under the act of congress of March 3, 1871, 'to incorporate the Texas Pacific Railroad Co., and to aid in the construction of its road, and for other purposes.' 16 St. 573. Section 23 of said act is as follows:

That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six' 16 St. 579.

Section 18 of the act conferring rights upon th



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### Opinion Case details

the interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted, shall be deducted from the amount granted by this act.' 14 St. 294, Sec. 3.

Substitute in this section the words, 'the Southern Pacific Railroad Company' for the words, 'the Atlantic & Pacific Railroad Company,' and we shall have the grant to the Southern Pacific Railroad Company both by the act of 1866, and the act of 1871. Soon after the passage of the said act of March 3, 1871, to-wit: on April 3, 1871, the Southern Pacific Railroad Company as it then existed, designated the line of its road from Tehachapa Pass by way of Los Angeles, to Fort Yuma, on the Colorado river, which it on that day filed in the office of the commissioner of the general land-office, and thereby the grant under said act of congress attached to all the odd sections of land, to which it could attach under the provisions of said act of congress. Afterwards, on the 12th day of August, 1873, the said Southern Pacific Railroad Company, in all respects as authorized by the laws of the state of California, existing and in force before and at the time of the passage of said act of congress of March 3, 1871, incorporating the Texas Pacific Railroad Company, amalgamated and consolidated with several smaller companies as shown by Exhibits A, B, annexed to the bill of complaint in these cases; the said consolidated company being called by the name of 'The Southern Pacific Railroad Company,' a part of the object stated in said articles of amalgamation being to construct a line of railroad from a point at or near Tehachapa Pass by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, a distance of three hundred and twenty-four miles as near as may be, in pursuance of said provisions

mentioning the number on to build a railroad to the b,



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Opinion Case details

the said Southern Pacific Railroad Company, respondent, which constructed its road as aforesaid, to the other respondents to this suit, and the title so conveyed, is now vested in them.

The first point made by complainants is, that the present Southern Pacific Railroad Company, which built the road after the amalgamation and consolidation with sundry smaller roads mentioned, under the same name as the old company, and professedly for the same purpose, made in pursuance of the statutes of the state of California, authorizing such consolidation and amalgamation, which statutes were in force at the date of the congressional grant in question, and prior to which consolidation the grant by congress was made, and which road was to be built in accordance with the laws of the state of California, is not the identical Southern Pacific Railroad Company, to which the act referred, and the grant was made, and therefore, that the defendant took nothing under the act of congress. This point is not new in this court, as it was fully considered and overruled in *Railroad Co. v. Poole*, 12 Sawy. 544, 545; 32 F. 451. Again, the point was made and earnestly urged in the southern district of California, in *U.S. v. Railroad Co. and U.S. v. Colton, etc., Co.*, and the district judge in an able opinion, concurred in, on this point, by the circuit judge, thoroughly examined the 688 point, and overruled it, citing \*688 with approval also, the case of *Railroad Co. v. Poole*, referred to, and affirming it. (14 Sawy. 623, 45 F. 596 et seq.) See, also, *Railroad Co. v. Orton*, 6 Sawy. 160, 32 F. 457. We shall adhere to the ruling made in these cases till the point is otherwise determined by the supreme court.

It is earnestly urged on the part of the respondents, that the filing in the office of the secretary of the interior, of the fragmentary maps of the location of the line of the contemplated Atlantic & Pacific road, and to points not authorized by the law, does not constitute a location of the line in such sense, or legal form, as to give any right whatever under the act, to the Atlantic & Pacific Company; and, that, it in no



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<https://casetext.com/case/united-states-v-southern-pac-r-co-14>

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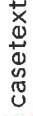
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**Opinion** Case details

that this company should file a plat of a route for a railroad, and then play the role of the dog in the manger, and neither build the road itself, and thereby earn the lands, nor allow the respondents to build one, and earn the lands under another grant. The Atlantic & Pacific Company never did anything to earn these lands, except to file, what it was pleased to term a 'map of the location of its route,' six years after the date of the grant, and one year after the respondent had located its road under the grant, made five years subsequently, and after it had commenced building the road; and for failure to comply with the terms of the grant, by the Atlantic & Pacific Company, congress, in 1886, (24 St. 123, 124,) passed an act forfeiting its right to earn these lands altogether. Thus its rights 'present' and 'prospective,' have never ripened into an effective grant, and now they never can so ripen. They now have, and can have no further rights in these lands, whether the respondents get them or not. The building of its road, by the respondents, and earning these lands, which the other party has itself failed to earn, and now never can earn, can in no possible way 'affect or impair' any rights the other company now has, or ever did have. And had that company built the road, and earned the lands, the respondent would not have got them, for that would have been to affect or impair its rights.

The present right of the Atlantic & Pacific Company was to earn the lands by the performance of the required conditions, and the prospective rights, the right to have the lands when so earned. This is all there is of it, and it did neither. Now the grant to the Southern Pacific, being subject, and subordinate, to those rights, could not in any way, or in any degree, have affected, or impaired them, because the Atlantic & Pacific Railroad Company, had it performed the conditions would have taken the said land under the act. It utterly failed to perform the conditions, and all its rights have been forfeited, and now the patenting of the lands to the Southern Pacific cannot in any way possible affect any of these rights which do not now exist. Thus the rights of the Atlantic & Pacific Company present or

prospective, neither could have been affected by



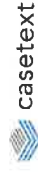
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### Opinion Case details

language of the acts. But the line of the Southern Pacific road is not on the line of the 'Atlantic and Pacific' route as designated on what is claimed to be its map of location. The two roads are not 'upon the same general line.' They simply cross each other. But again: The fair construction of this proviso, and as it was intended by congress, in view of the object sought, is, that 'lands that have heretofore been granted,' and 'the amount of land' to be dedicated, means lands that have been effectively granted, and to which the title has passed, or shall effectively pass out of the United States, and finally become effectively vested in the grantees upon the performance of the prescribed conditions. It does not mean inchoate grants, that are not finally perfected—grants that become forfeited by failure to earn them by performing the prescribed conditions or any of them. These do not, ultimately, become grants at all, within the meaning of the act, and intent of congress. Congress was anxious to procure the construction of these great works, for military, mail-carrying, and other uses, and thereby also develop the resources of the country, and make a market for the public <sup>691</sup> lands. It contributed nothing, because it received double price for the even sections. In these provisions, it was, only solicitous to protect the vested rights of prior grantees in lands fairly earned in constructing works of a similar kind in pursuance of a similar policy. It did not seek, by forfeitures, to evade its obligations to subsequent roads, and thereby increase its own property, at the expense of those who, actually carry out the objects of the law, and fairly earn the lands intended for them. We cannot attribute any such unworthy purpose, or motive to congress. It manifestly, intended, that the subsequent grantees should take the odd sections subject only to prior rights, and when the prior grants failed, and finally, became no grants, by reasons of a failure to perform the conditions necessary to perfect the grant, and when no rights can possibly be further affected by the grant to the subsequent grantee, that the latter, upon complying with the terms of its grant should have the lands, not ultimately, or effectively granted under the prior acts of congress. Effective, completed grants only, are contemplated in this proviso.



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## Opinion Case details

### letter grant.

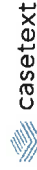
I am, therefore, of the opinion, that the earning and acquiring of these lands by the respondents, under the conditions shown by the record, in no way affected, or impaired, the 'rights present or prospective,' of the Atlantic & Pacific Railroad Company, or any other, within the meaning of the act of congress; and that, these lands are not lands heretofore, or at any time, granted by the act of congress in such sense as to require them to be deducted along the general line of the road, or otherwise, within the meaning of the acts of congress of 1866, and 1871, or of either of them.

Upon the views expressed, the amended bills must be dismissed, and it is so ordered, without costs.

ROSS, J.

These cases have been argued and submitted together. The suits are brought to quiet the complainant's alleged title to certain lands and to enjoin defendant from asserting or claiming any title thereto. The lands are claimed by the defendant by virtue of the act of congress of March 3, 1871, entitled 'An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes.' 16 St.U.S. 573. By the 23d section of that act it was provided as follows:

That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado river, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866, provided, however that this section shall in



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### Opinion Case details

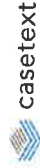
and to be decided. The grant to the Atlantic & Pacific Company was the prior grant-- it having been made by the act of July 27, 1866, entitled 'An act granting lands to aid in the construction of a railroad and telegraph line in the states of Missouri and Arkansas to the Pacific coast.' 14 St.U.S. 293. By that act the Atlantic & Pacific Company was authorized to construct a railroad

'Beginning at or near the town of Springfield, in the state of Missouri, thence to the western boundary of said state, and thence, by the most eligible railroad route as shall be determined by the said company, to a point on the Canadian river; thence to the town of Albuquerque on the river Del Norte, and thence by way of the Agua Frio or other suitable pass to the head-waters of the Colorado Chiquito, and thence along the 35th parallel of latitude, as near as may be found most suitable for a railroad route, to the Colorado river at such point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific.'

To aid in the construction of the road there was granted to the Atlantic & Pacific Company, by the third section of the act, every alternate section of public land, not mineral, designated by odd numbers, to the amount of 10 sections on each side of the road whenever it passes through a state

'And whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption '694 or other claims or rights, at the time the line of said road is designated by a plat thereof filed in the office of the commissioner of the general land-office, and whenever, etc.

The Atlantic & Pacific Company did nothing towards locating its line of road in California until March 12, 1872, and never did do anything towards building it; in consequence of which congress, in 1886, passed an act declaring its land grant forfeited. In the mean time, that is to say, March 3, 1871, the grant under which the defendant co



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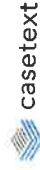


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### Opinion Case details

Southern Pacific Company should be excluded from that grant. It was not to reserve anything to the United States, but to protect the 'present and prospective' rights of the Atlantic & Pacific Company and any other railroad company to which congress may have made grants of lands that the proviso was inserted. Had the line of road the Atlantic & Pacific Company was authorized to build by the act of July 27, 1866, been definitely located at the time of the grant to the Southern Pacific Company of March 3, 1871, and had the Atlantic & Pacific Company thereafter built its road and thereby earned the lands covered by its grant, the lands in controversy would have gone to it without regard to the proviso in question; for its grant which would have attached to such lands at the time of the definite location of the route of its road would have been perfected by the building of the road and the title thus perfected have related back to the date of the grant, July 27, 1866, and of course have excluded any subsequent grant covering the same lands. But the Atlantic & Pacific Company had not designated the route of its road at the time of the grant to the Southern Pacific Company of March 3, 1871. It might do so, however, thereafter and might build the road it was authorized to build and thereby earn the lands embraced by the grant to it of July 27, 1866. It had a 'present and prospective' right to do so. If it did both of those things, it would be entitled to the lands granted to it by that act. If it did not do both of those things, it would not be so entitled and the lands would remain as they then were, public lands of the United States. Congress, therefore, in making its grant to the Southern Pacific Company of March 3, 1871, made it subject to those 'present and prospective' rights. Had they been perfected by a compliance on the part of the Atlantic & Pacific Company with the conditions on which they were based, the title to the lands in controversy would have become vested in the Atlantic & Pacific Company as of date July 27, 1866. But as that company never did comply with the conditions of the grant and as all of its rights thereunder became forfeited in 1886 by act of congress because of such non-compliance, there remain no rights of that company to be, or that ~~ever can be affected or~~



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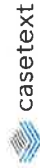
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Denver, Colorado 80202-3622  
303-299-8474

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THIS SPACE FOR RECORDERS USE ONLY

TITLE OF DOCUMENT

EASEMENT DEED BY COURT ORDER  
IN SETTLEMENT OF LANDOWNER ACTION

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(GOVERNMENT CODE § 27561.6)

23  
(3)

1 Members of this Class are referred to below as Class Members; and  
2 WHEREAS, the Settlement Agreement provides for the entry of an Easement Deed by  
3 Court Order in Settlement of Landowner Action by which the Settling Defendants acquire, to the  
4 extent that Class Members have the right to transfer it, a permanent telecommunications  
5 easement in the Right of Way adjacent to the property of each Class Member;  
6

7 **THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT:**

8 1. To the extent that each Class Member owns rights in the Easement Premises (as  
9 hereafter defined), the Class Member (the "Grantor") hereby grants to whichever of Sprint  
10 Communications Company L.P., Qwest Communications Company, LLC, Level 3  
11 Communications, LLC, and WITel Communications, Inc. has Designated for inclusion under a  
12 Settlement Agreement the Right of Way which adjoins, underlies or includes Covered Property  
13 owned by the Class Member, together with its successors, assigns, and licensees (the "Grantee"),  
14 a permanent telecommunications easement in the Easement Premises. For each county in which  
15 this Easement Deed by Court Order in Settlement of Landowner Action is being recorded, a list  
16 of affected Class Members and their affected parcels is attached as Exhibit 1. Exhibit 1 shall  
17 describe Class Members' affected parcels with the following information, to the extent that it is  
18 in the Database of Identification Information: owner name; owner mailing address; tax map  
19 identification number; tax parcel identification number; lot number; and section, township, and  
20 range. Exhibit 1 may describe Class Members' affected parcels with any other available  
21 information.  
22

23  
24 2. The terms and conditions of the permanent telecommunications easement that is  
25 the subject of this Easement Deed by Court Order in Settlement of Landowner Action are:

26 a perpetual easement and right of way (hereinafter, together with the rights and privileges  
27 herein granted, the "Easement") and right to place, lay, bury, construct, install, operate, repair,

1 Easement shall be construed to grant Grantee all rights necessary to abandon in place unused  
2 components of Grantee's Telecommunications Cable System.

3 The Easement shall not include the right to construct on the Easement Premises  
4 regenerator huts and similar structures ("Buildings") in addition to those existing on November  
5 21, 2012. The Easement shall include the rights to repair, replace, and expand existing  
6 Buildings, provided, however, that no such repair, replacement, or expansion shall increase the  
7 site that the Buildings occupy, or the height of any Building, by more than twenty-five percent.  
8 The Easement does not permit the construction of microwave towers, cell towers, or other  
9 components of a primarily aboveground statewide Telecommunications Cable System.  
10

11 The Easement includes the right to temporarily use the entire Grantor Side of the  
12 Railroad Right of Way for construction or maintenance, so long as Grantee uses its best efforts  
13 not to interfere with any real property which, although within the boundaries of the Easement  
14 Premises, is actually being used by Grantor; provided, however, that in no event shall Grantee be  
15 prohibited from using such real property if it is commercially reasonable to do so under the  
16 circumstances or if Grantee's Telecommunications Cable System is currently located within such  
17 area. The Easement shall include the right of reasonable ingress and egress to and from the  
18 Easement Premises over that portion of the Grantor's real property that underlies the Railroad  
19 Right of Way and, for repair and maintenance, over any existing private roads of Grantor, where  
20 access from public or railroad roads is not reasonably practical, provided Grantee has made  
21 commercially reasonable efforts to give prior notice to Grantor of Grantee's use of Grantor's  
22 private roads. Grantee shall not be liable for damages caused by its removal of trees,  
23 undergrowth, and brush within the Easement Premises necessary or appropriate for the  
24 enjoyment of the Easement. Nothing contained herein shall constitute a waiver of any right that  
25  
26  
27

1 grant, lease, assign, or otherwise transfer, all or any part of the rights in or use of such  
2 Telecommunications Cable System.

3 The Easement, however, does not apply to any Telecommunications Cable System that  
4 existed on November 21, 2012, but that was acquired by Grantee after that date (unless such  
5 Telecommunications Cable System or component thereof was acquired from any of Sprint  
6 Communications Company L.P.; Qwest Communications Company, LLC, f/k/a Qwest  
7 Communications Corporation; Level 3 Communications, LLC, Level 3 Communications, Inc.,  
8 and Level 3 Telecom Holdings, Inc.; WiITel Communications, Inc.; WiITel Communications,  
9 LLC; and Williams Communications, LLC, f/k/a Williams Communications, Inc., f/k/a Vyxx,  
10 Inc.).

11 No oil, gas, or other mineral rights are granted and no existing oil, gas, or other mineral  
12 rights are expanded, limited, or affected by this instrument, provided, however, that Grantor shall  
13 not use a method of extraction that interferes with or impairs in any way the Easement, the  
14 Telecommunications Cable System, or the exercise of Grantee's rights herein.

15 Grantor shall not, nor shall Grantor authorize others to, construct or create any road,  
16 reservoir, excavation, obstruction, structure, or building or change the land grade on, in, over,  
17 under, through, or across the Easement Premises without the prior written consent of Grantee,  
18 provided that nothing herein shall be construed to affect the rights and obligations of any railroad  
19 with respect to the use, improvement, or alteration of its Railroad Right of Way, as provided in  
20 any agreement between the railroad and the Grantee, by applicable law, or otherwise.

21 It is understood and agreed that the Easement is not exclusive and is subject to all pre-  
22 existing uses and pre-existing rights to use the Easement Premises, whether such uses are by  
23 Grantor or others and whether for surface uses, crossings, or encroachments by communication  
24

1 of Way in any Railroad Right of Way as to which the Interstate Commerce Commission or the  
2 Surface Transportation Board has entered an order, pursuant to 49 U.S.C. § 10903, that the  
3 railroad is authorized to cease to provide or maintain rail service over that right of way and the  
4 railroad no longer provides or maintains rail service over that line, provided that if the railroad  
5 does not cease such rail service or later reactivates such service, then this limitation shall not  
6 apply.

7  
8 This Telecommunications Cable System Easement Deed is executed and delivered on  
9 behalf of Grantor for the purpose of granting the Easement to Grantee in, on, over, under,  
10 through and/or across the Easement Premises to the full extent of Grantor's right, title or interest,  
11 if any, in or to the Easement Premises, and the Easement granted hereby shall affect the  
12 Easement Premises only to the extent of Grantor's right, title, and interest therein. Grantor and  
13 Grantee agree that this Telecommunications Cable System Easement Deed shall not grant any  
14 rights to the Easement Premises, or any portion thereof, in which Grantor holds no right, title or  
15 interest.

16  
17 No rights reserved to Grantor herein shall be deemed to expand rights reserved to Grantor  
18 under any other easement, right of way, license, lease, or any similar instrument or court order.

19 No limitation herein on the rights of Grantee shall be deemed to limit rights heretofore granted  
20 by Grantor or its predecessors in interest under any other easement, right of way, license, lease,  
21 or any similar instrument or court order.

22  
23 The terms and provisions of this instrument shall constitute covenants running with the  
24 land and shall be binding upon and inure to the benefit of the Settling Defendants, the Grantor,  
25 their successors, assigns, personal representatives, and heirs.

In accordance with Paragraph 1 of the Easement Deed by Court Order in Settlement of Landowner Action (the "Court Order"),  
 Qwest prepared this Exhibit 1 and attached it to the Court Order.  
 The owner's/grantor's mailing address is not necessarily the same as the affected parcel's address.

| Assessor's Parcel No. | T-R-S      | Owner's/Grantor's Name                     | Owner's/Grantor's Mailing Address         |
|-----------------------|------------|--|---|
| 021-160-017           | 11S-14E-3  | Partnership<br>Southern Pacific Pipe Lines | 888 So Figueroa St, Los Angeles, CA 90017 |
| 021-160-020           | 11S-14E-3  | TNT Enterprises Inc                        | PO Box 427, Wildomar, CA 92395            |
| 021-280-003           | 11S-14E-10 | Juan Chavez                                | PO Box 642, Calipatria, CA 92233          |
| 021-280-005           | 11S-14E-10 | Y Ranches                                  | PO Box 267, Calipatria, CA 92233          |
| 021-280-010           | 11S-14E-10 | IID - Trust Lands                          | PO Box 937, Imperial, CA 92251            |
| 021-290-013           | 11S-14E-12 | IID - Trust Lands                          | PO Box 937, Imperial, CA 92251            |
| 021-290-015           | 11S-14E-11 | IID - Trust Lands                          | PO Box 937, Imperial, CA 92251            |
| 021-321-004           | 11S-14E-15 | Anna S Sandhu Tr et al                     | 6212 Commodore Ln, Oklahoma, OK 73162     |
| 021-331-002           | 11S-14E-15 | TNT Enterprises Inc                        | PO Box 427, Wildomar, CA 92395            |
| 021-331-003           | 11S-14E-15 | IID - Trust Lands                          | PO Box 937, Imperial, CA 92251            |
| 021-331-004           | 11S-14E-15 | IID - Trust Lands                          | PO Box 937, Imperial, CA 92251            |
| 021-340-003           | 11S-14E-13 | Andrew & Marlene Currier                   | 290 River Wood Dr, Brawley, CA 92227      |
| 022-020-005           | 11S-14E-22 | IID - Trust Lands                          | PO Box 937, Imperial, CA 92251            |

**LIST OF AFFECTED PARCELS**

**IMPERIAL COUNTY**

**EXHIBIT 1**

**Grantee's Name:** Qwest as defined in the "Settlement Agreement" referenced in the text of the Easement Deed by Court Order in Settlement of Landowner Action. That Settlement Agreement defines "Qwest" to include: (1) Qwest Communications International Inc, (2) Qwest Communications Corporation now known as Qwest Communications Company, LLC, and (3) all of these entities' predecessors, successors, assigns, parents, affiliates and subsidiaries.

**Grantee's Address:** 700 West Mineral Avenue, Littleton, Colorado 80120



| Assessor's Parcel No. | T-R-5      | Owner's/Grantor's Name             | Owner's/Grantor's Mailing Address         |
|-----------------------|------------|------------------------------------|---|
| 024-260-061           | 125-14E-22 | EZ Properties LLC                  | 2506 Kentia St, Oxnard, CA 93036          |
| 024-290-004           | 125-14E-27 | IID - Trust Lands                  | PO Box 937, Imperial, CA 92251            |
| 024-290-021           | 125-14E-27 | Herbert J & Elizabeth L Bool       | 6844 N 36th St, Phoenix, AZ 85018         |
| 024-290-022           | 125-14E-27 | Herbert J & Elizabeth L Bool       | 6844 N 36th St, Phoenix, AZ 85018         |
| 024-290-025           | 125-14E-27 | TNT Enterprises Inc                | PO Box 427, Wildomar, CA 92395            |
| 024-340-015           | 125-14E-34 | Herbert J & Elizabeth L Bool       | 6844 N 36th St, Phoenix, AZ 85018         |
| 024-340-016           | 125-14E-34 | Herbert J & Elizabeth L Bool       | 6844 N 36th St, Phoenix, AZ 85018         |
| 025-260-003           | 115-15E-18 | Timothy Bopp                       | 2401 E Glen Oaks Blvd, Glendale, CA 91206 |
| 025-260-006           | 115-15E-18 | Mark A Wheeler                     | 28229 Branch Rd, Castaic, CA 91384        |
| 025-260-008           | 115-15E-18 | Denis L Kieldosty                  | 2386 Tisbury Dr, Henderson, NV 89052      |
| 025-260-019           | 115-15E-17 | Lincoln H Banks                    | 777 Alvarado Rd, La Mesa, CA 91941        |
| 025-260-031           | 115-15E-18 | Ricardo Martinez                   | PO Box 572, Niland, CA 92257              |
| 025-290-010           | 115-15E-36 | S B Grant & E B Franklin LLC et al | 901 N Brutscher St, Newberg, OR 97132     |
| 025-290-019           | 115-15E-36 | I M Fogelman et al                 | 27 Gleneagles, Newport Beach, CA 92660    |
| 034-360-036           | 165-11E-12 | Ed L Construction Inc              | PO Box 785, San Marcos, CA 92069          |
| 034-360-037           | 165-11E-12 | Ed L Construction Inc              | PO Box 785, San Marcos, CA 92069          |
| 037-030-012           | 135-14E-3  | Barbara D Cox                      | 249 Andrita Pl, Brawley, CA 92227         |
| 037-030-022           | 135-14E-2  | Carl E Weller                      | 5451 N 25th St, Phoenix, AZ 85016         |
| 037-060-018           | 135-14E-3  | Lawrence W & Tina Cox              | PO Box 301, Brawley, CA 92227             |
| 037-070-013           | 135-14E-3  | Henrietta Farms Inc                | PO Box 239, Brawley, CA 92227             |
| 037-100-003           | 135-14E-10 | SP & ML Rutherford Tr              | PO Box 6, Brawley, CA 92227               |
| 037-100-004           | 135-14E-10 | Garguio Farms                      | PO Box 56, Brawley, CA 92227              |
| 037-140-006           | 135-14E-15 | ORNI LLC                           | 6225 Neil Rd, Reno, NV 89511              |
| 037-140-021           | 135-14E-15 | ORNI LLC                           | 6225 Neil Rd, Reno, NV 89511              |
| 037-160-011           | 135-14E-15 | IID-Imperial Irrigation District   | PO Box 937, Imperial, CA 92251            |
| 037-160-012           | 135-14E-22 | Emma Louclie Walk                  | 1101 St, Brawley, CA 92227                |
| 037-160-019           | 135-14E-22 | JLF Ranches Ltd                    | PO Box 134, Brawley, CA 92227             |
| 037-160-021           | 135-14E-22 | Matthew Lee Rutherford Tr          | PO Box 6, Brawley, CA 92227               |

\*In accordance with Paragraph 1 of the Escrow Deed by Court Order in Settlement of Landowner Action (the "Court Order"),  
 Quest prepared this Exhibit 1 and attached it to the Court Order.

The owner's/grantor's mailing address is not necessarily the same as the affected parcel's address.

IMPERIAL

In accordance with Paragraph 1 of the Easement Deed by Court Order in Settlement of Landowner Action (the "Court Order"),  
 I, the undersigned, have prepared this Exhibit 1 and attached it to the Court Order.  
 The owner's/grantor's mailing address is not necessarily the same as the affected parcel's address.

| Assessor's Parcel No. | T-R-S      | Owner's/Grantor's Name                  | Owner's/Grantor's Mailing Address?      |
|-----------------------|------------|---|---|
| 044-200-079           | 155-14E-19 | Delgado Secundo Arellano & Martha Co Tr | 1161 Obeliscos, Calexico, CA 92231      |
| 044-200-079           | 155-14E-19 | Martha Co Tr                            | 1161 Obeliscos, Calexico, CA 92231      |
| 044-200-081           | 155-14E-19 | Hector F Margain                        | PO Box 8214, Chula Vista, CA 92012      |
| 044-200-086           | 155-14E-30 | Ana Bastidas et al                      | 320 Aten Rd, Imperial, CA 92251         |
| 044-220-004           | 155-14E-30 | Simal Chemical Co                       | PO Box 27, Boise, ID 83707              |
| 044-220-022           | 155-14E-30 | WHB Enterprises                         | 1085 State St, El Centro, CA 92243      |
| 044-290-015           | 155-14E-31 | Dubois Land & Livestock Co LLC          | 801 W Ross Rd, El Centro, CA 92243      |
| 044-313-001           | 155-14E-31 | Maria Nicolasa Beltran                  | 1097 Stacey Ave, El Centro, CA 92243    |
| 044-313-002           | 155-14E-31 | Francisco J & Maria Martinez            | 1087 Stacey Ave, El Centro, CA 92243    |
| 044-313-003           | 155-14E-31 | Mary Helen Gloria                       | 1077 Stacey, El Centro, CA 92243        |
| 044-313-004           | 155-14E-31 | Rosa N Maldonado                        | 1067 Stacey Ave, El Centro, CA 92243    |
| 044-313-005           | 155-14E-31 | Joseph Lee Houseman                     | PO Box 387, Imperial, CA 92251          |
| 044-313-006           | 155-14E-31 | Jose C & Socorro M Antunez              | 1257 Pepper Ave, El Centro, CA 92243    |
| 044-313-007           | 155-14E-31 | Reyes A & Romelia Gonzalez              | 1037 Stacey Ave, El Centro, CA 92243    |
| 044-313-008           | 155-14E-31 | Ernesto Bustamante                      | 1027 Stacey Ave, El Centro, CA 92243    |
| 044-313-009           | 155-14E-31 | John Angel & Navar I Garcia             | 1017 Stacey Ave, El Centro, CA 92243    |
| 044-313-010           | 155-14E-31 | Ruben & Dahlia Jimenez                  | 1490 Brighton Ave, El Centro, CA 92243  |
| 044-313-011           | 155-14E-31 | Victor & Gloria Herrera                 | 1001 Stacey Ave, El Centro, CA 92243    |
| 044-313-012           | 155-14E-31 | Frank J & Maria A Perdomo               | 897 Stacey, El Centro, CA 92243         |
| 044-313-013           | 155-14E-31 | Thomas E & Maria Jesus Diaz             | 887 Stacey Ave, El Centro, CA 92243     |
| 044-313-014           | 155-14E-31 | Martin J Aguilera et al                 | 1526 Trinky Way, Salinas, CA 93906      |
| 044-313-015           | 155-14E-31 | Frank G & Anita A Cruz                  | 867 Stacey Ave, El Centro, CA 92243     |
| 044-313-016           | 155-14E-31 | Arnulfo V De Hoyos et al                | 857 Stacey Ave, El Centro, CA 92243     |
| 044-313-017           | 155-14E-31 | Delvin & Patricia Yarnall               | 2275 Pepper Dr, El Centro, CA 92243     |
| 044-313-018           | 155-14E-31 | Encarnacion & Rosamaria Cabrera         | 837 Stacey Ave, El Centro, CA 92243     |
| 044-313-019           | 155-14E-31 | Gale L Laram                            | 4410 Glistening Spgs, Rowlett, TX 75088 |
| 044-313-020           | 155-14E-31 | Rafael & Jacqueline Gutierrez           | 817 Stacey Ave, El Centro, CA 92243     |
| 044-313-021           | 155-14E-31 | Rosalinda Garcia-Herrera                | 807 Stacey, El Centro, CA 92243         |

IMPERIAL

| Assessor's Parcel No. | T-R-S      | Owner's/Grantor's Name             | Owner's/Grantor's Mailing Address?   |
|-----------------------|------------|------------------------------------|--------------------------------------|
| 044-561-005           | 155-14E-31 | Cesar & Donna Martinez             | 1241 Stacey Ave, El Centro, CA 92243 |
| 044-561-006           | 155-14E-31 | Arthur & Yvette M Garcia           | 1251 Stacey, El Centro, CA 92243     |
| 044-561-007           | 155-14E-31 | Hermilia Rios                      | 1261 Stacey Ave, El Centro, CA 92243 |
| 044-561-008           | 155-14E-31 | Jose Luis D Gonzales               | 1271 Stacey Ave, El Centro, CA 92243 |
| 044-561-009           | 155-14E-31 | Ricardo M & Maria D Santos         | 1281 Stacey Ave, El Centro, CA 92243 |
| 044-561-010           | 155-14E-31 | Peggy J Artrup                     | 1291 Stacey Ave, El Centro, CA 92243 |
| 044-561-011           | 155-14E-31 | Lucinda Parkinson                  | 1299 Stacey, El Centro, CA 92243     |
| 044-561-012           | 155-14E-31 | Sixto & Estrella Diaz              | 910 N 14th St, El Centro, CA 92243   |
| 047-010-029           | 135-14E-27 | National Beef California LP        | 57 E Shank Rd, Brawley, CA 92227     |
| 047-050-012           | 135-14E-28 | Chevron USA Inc                    | PO Box 1392, Bakersfield, CA 93302   |
| 047-060-003           | 135-14E-28 | Chevron USA Inc                    | PO Box 1392, Bakersfield, CA 93302   |
| 047-140-005           | 135-14E-28 | IID - Trust Lands                  | PO Box 937, Imperial, CA 92251       |
| 047-281-006           | 135-14E-33 | Brawley American Citizens Club Inc | PO Box 529, Brawley, CA 92227        |
| 047-281-007           | 135-14E-33 | Brawley American Citizens Club Inc | PO Box 529, Brawley, CA 92227        |
| 047-281-010           | 135-14E-33 | Brawley American Citizens Club Inc | PO Box 529, Brawley, CA 92227        |
| 047-281-011           | 135-14E-33 | Chubasco LLC                       | 385 N 9th St, Brawley, CA 92227      |
| 047-281-012           | 135-14E-33 | Church                             | 305 N 9th St, Brawley, CA 92227      |
| 047-281-018           | 135-14E-33 | Church                             | 305 N 9th St, Brawley, CA 92227      |
| 047-351-008           | 135-14E-33 | Thomas A Gargjulo                  | PO Box 1207, Brawley, CA 92227       |
| 047-351-009           | 135-14E-33 | Thomas A Gargjulo                  | PO Box 1207, Brawley, CA 92227       |
| 048-250-037           | 145-14E-04 | Jimmy Dean Tucker                  | 4201 Dogwood Rd, Brawley, CA 92227   |
| 048-250-054           | 145-14E-04 | Delvin J & Frances M Ashurst       | PO Box 100, Westmorland, CA 92281    |
| 048-250-055           | 145-14E-04 | Jon Montgomery Self                | 4201 Dogwood Rd, Brawley, CA 92227   |
| 049-031-011           | 135-14E-33 | The Hartford Center LLC            | 4425 Brandt Rd, Brawley, CA 92227    |
| 049-032-009           | 135-14E-33 | Bob L & Juanita Merrill            | PO Box 1434, Brawley, CA 92227       |

IMPERIAL

\*In accordance with Paragraph 1 of the Escrow Deed by Court Order in Settlement of Landowner Action (the "Court Order"),  
 Quest prepared this Exhibit 1 and attached it to the Court Order.  
 \*The owner's/grantor's mailing address is not necessarily the same as the affected parcel's address.

The owner's/grantor's mailing address is not necessarily the same as the affected parcel's address.  
 In accordance with Paragraph 1 of the Escrow Order in Settlement of Landowner Action (the "Court Order"),  
 quiet prepared this Exhibit 1 and attached it to the Court Order.

| Assessor's Parcel No. | T-R-S      | Owner's/Grantor's Name           | Owner's/Grantor's Mailing Address <sup>2</sup> |
|-----------------------|------------|----------------------------------|--|
| 051-084-001           | 165-12E-07 | Carmen Redondo et al             | PO Box 208, Seelye, CA 92273                   |
| 051-084-003           | 165-12E-07 | Jesus Redondo                    | 2825-A W Evan Hewes Hwy, Imperial, CA 92251    |
| 051-091-001           | 165-12E-07 | IID-Imperial Irrigation District | PO Box 937, Imperial, CA 92251                 |
| 051-092-001           | 165-12E-07 | Sam Estes                        | PO Box 830, Seelye, CA 92273                   |
| 051-092-002           | 165-12E-07 | Maria Lourdes Acuna              | 371 Ross Rd, El Centro, CA 92243               |
| 051-092-010           | 165-12E-07 | Heidi L Kuhn                     | 5743 Meadows del Mar, San Diego, CA 92130      |
| 051-092-014           | 165-12E-07 | Heidi L Kuhn                     | 5743 Meadows del Mar, San Diego, CA 92130      |
| 051-120-024           | 165-12E-09 | George J & Clemence V Lerno      | 2801 W Main St, El Centro, CA 92243            |
| 051-120-025           | 165-12E-09 | FC & MK Tomlinson LLC            | 259 S Randolph Ave, Brea, CA 92821             |
| 051-120-039           | 165-12E-10 | George J & Clemence V Lerno      | 2801 W Main St, El Centro, CA 92243            |
| 051-120-047           | 165-12E-10 | Frank N & Carme J Tomlinson      | PO Box 2577, Capistrano Beach, CA 92624        |
| 051-120-060           | 165-12E-10 | Madeline L Kuhn                  | 47 Medina Dr, Palm Desert, CA 92260            |
| 051-215-001           | 165-12E-12 | Diogo                            | 795 So La Brucherie Rd, El Centro, CA 92243    |
| 051-242-001           | 165-12E-11 | Val-Rock Inc                     | 3200 San Fernando Rd, Los Angeles, CA 90065    |
| 051-250-007           | 165-12E-11 | Francisco & Maria T Parga        | PO Box 476, Imperial, CA 92251                 |
| 051-250-008           | 165-12E-12 | Francisco & Maria T Parga        | PO Box 476, Imperial, CA 92251                 |
| 051-250-010           | 165-12E-12 | Seeley Properties LLC            | 1805 Evan Hewes, PO Box 549 Seelye, CA 92273   |
| 051-250-011           | 165-12E-11 | First Baptist Church of Seelye   | PO Box 770, Indio, CA 92202                    |
| 051-420-030           | 165-12E-12 | Paul E & Beverly A Benefield     | 1191 River Front Dr, Bullhead City, AZ 86442   |
| 051-420-033           | 165-12E-12 | Diogo                            | 795 So La Brucherie Rd, El Centro, CA 92243    |
| 051-420-034           | 165-12E-12 | Norman P Pearse                  | 1958 Sunderidge, San Antonio, TX 78260         |
| 051-420-036           | 165-12E-12 | Paul & Beverly Benefield         | 1191 River Front Dr, Bullhead City, AZ 86442   |
| 051-420-037           | 165-12E-12 | Paul & Beverly Benefield         | 1191 River Front Dr, Bullhead City, AZ 86442   |
| 051-420-055           | 165-12E-12 | Wigwam Investments LLC           | 10920 Via Frontera, San Diego, CA 92127        |
| 051-420-066           | 165-12E-12 | Johnny P & Gloria S Singh        | 607 Russell, Brawley, CA 92227                 |
| 051-440-001           | 165-12E-11 | Madeline L Kuhn                  | 47 Medina Dr, Palm Desert, CA 92260            |
| 051-440-005           | 165-12E-11 | IID-Imperial Irrigation District | PO Box 937, Imperial, CA 92251                 |

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| Assessor's Parcel No. | T-R-5      | Owner's/Grantor's Name                       | Owner's/Grantor's Mailing Address?         |
|-----------------------|------------|--|--|
| 063-141-001           | 155-14E-18 | Gary A & Sue W Shumard                       | 647 Desert Gardens Dr, El Centro, CA 92243 |
| 063-122-009           | 155-14E-18 | Maximiano & Consuelo Torres                  | PO Box 605, Imperial, CA 92251             |
| 063-122-008           | 155-14E-18 | Maximiano & Consuelo Torres                  | PO Box 605, Imperial, CA 92251             |
| 063-122-007           | 155-14E-18 | Joseph R Flores                              | PO Box 1204, Boulevard, CA 91905           |
| 063-122-006           | 155-14E-18 | Al Denis H & Arlene M Devermont et           | PO Box 421217, San Diego, CA 92142         |
| 063-121-005           | 155-14E-18 | Adam & Alma Lopez                            | 4534 Carter Ct, Chino, CA 91710            |
| 063-112-007           | 155-14E-18 | Adam & Alma Lopez                            | 4534 Carter Ct, Chino, CA 91710            |
| 063-112-004           | 155-14E-18 | Alan M Thornburg                             | PO Box 39, Julian, CA 92036                |
| 063-112-002           | 155-13E-32 | Heidi L Kuhn                                 | 5743 Meadows Del Mar, San Diego, CA 92130  |
| 062-111-021           | 155-13E-32 | Rafael & Gloria Escutia                      | 1599 N 12th St, El Centro, CA 92243        |
| 062-102-002           | 155-13E-31 | Ramsay M D & G<br>Smith-Kandal Real Estate & | 510 W Main St, Brawley, CA 92227           |
| 062-101-001           | 155-13E-31 | Ramsay M D & G<br>Smith-Kandal Real Estate & | 510 W Main St, Brawley, CA 92227           |
| 062-090-035           | 155-13E-34 | Heidi Kuhn                                   | 5743 Meadows Del Mar, San Diego, CA 92130  |
| 062-090-025           | 155-13E-32 | La Valle Sabbia Inc                          | 2015 Sliabee Rd, El Centro, CA 92243       |
| 062-090-022           | 155-13E-33 | La Valle Sabbia Inc                          | 2015 Sliabee Rd, El Centro, CA 92243       |
| 062-090-017           | 155-13E-33 | La Valle Sabbia Inc                          | 2015 Sliabee Rd, El Centro, CA 92243       |
| 062-090-012           | 155-13E-34 | Meyer Imperial Investments III LLC           | 2921 B S Kish Ave, Yuma, AZ 85365          |
| 062-090-009           | 155-13E-34 | Meyer Imperial Investments III LLC           | 2921 B S Kish Ave, Yuma, AZ 85365          |
| 062-080-069           | 155-13E-31 | Ramsay M D & G<br>Smith-Kandal Real Estate & | 510 W Main St, Brawley, CA 92227           |
| 062-080-060           | 155-13E-31 | Sm Seed & Milling LLC                        | 2050 Bennett Rd, El Centro, CA 92243       |
| 062-080-058           | 155-13E-31 | Jose & Juana Rodriguez                       | 1624 Ames Rd, El Centro, CA 92243          |
| 062-080-057           | 155-13E-31 | Fernando & Rosario Maestre                   | 1620 W Ames Rd, El Centro, CA 92243        |
| 062-080-056           | 155-13E-31 | Robert E & Margaret P Horton                 | 1614 W Ames Rd, El Centro, CA 92243        |
| 062-080-055           | 155-13E-31 | Gustavo & Debra T Ramirez                    | 1591 W Elm Ave, El Centro, CA 92243        |

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 Owner's/Grantor's mailing address is not necessarily the same as the affected parcel's address.

| Assessor's Parcel No. | T-R-S      | Owner's/Grantor's Name              | Owner's/Grantor's Mailing Address <sup>1</sup> |
|-----------------------|------------|-------------------------------------|--|
| 064-460-001           | 155-13E-34 | Meyer Imperial Investments III LLC  | 2921 B S Kish Ave, Yuma, AZ 85365              |
| 064-460-007           | 155-13E-36 | MSPM Associates LP                  | 2815A Lafayette Ave, Newport Beach, CA 92663   |
| 064-470-046           | 155-13E-36 | Donald L & Marilyn J Scoville et al | PO Box 394, El Centro, CA 92244                |
| 064-470-091           | 155-14E-31 | Cole PB Portfolio LP                | 3111 W Allegheny Ave, Philadelphia, PA 19132   |
| 064-542-005           | 155-13E-36 | Jose & Margarita Ordonez            | 901 N 17th St, El Centro, CA 92243             |
| 064-542-006           | 155-13E-36 | Humberto & Martha Aguilera          | 1701 Stacey Ct, El Centro, CA 92243            |
| 064-542-007           | 155-13E-36 | Julieta Anduro                      | 1715 Stacey Ct, El Centro, CA 92243            |
| 064-542-008           | 155-13E-36 | Robert Jones                        | 1735 Stacey Ct, El Centro, CA 92243            |
| 064-542-009           | 155-13E-36 | Joe Heger Farms LLC                 | PO Box 880, El Centro, CA 92244                |
| 064-542-010           | 155-13E-36 | Carlos Vasquez                      | 649 Cinnabar St, Imperial, CA 92251            |
| 064-542-011           | 155-13E-36 | Jesus & Marisa Torres               | 1801 Stacey Ct, El Centro, CA 92243            |
| 064-542-012           | 155-13E-36 | Ramon & Ana Bertha Mendoza          | 1815 Stacey Ct, El Centro, CA 92243            |
| 064-542-013           | 155-13E-36 | Lopez Jorge I & Velasquez Mayra     | 1835 Stacey Ct, El Centro, CA 92243            |
| 064-542-014           | 155-13E-36 | George & Margarita Ontiveros        | 1855 Stacey Ct, El Centro, CA 92243            |
| 064-542-015           | 155-13E-36 | Efrain A Jr & Berthabe L Tanori     | 1875 Stacey Ct, El Centro, CA 92243            |
| 064-542-016           | 155-13E-36 | Elfonso M & Linda A Nava            | 1895 Stacey Ct, El Centro, CA 92243            |
| 064-542-017           | 155-13E-36 | Francisco & Alma Rosa Cervantes     | 902 N 19th St, El Centro, CA 92243             |

IMPERIAL

<sup>1</sup>In accordance with Paragraph 1 of the Escrow Deed by Court Order in Settlement of Landowner Action (the "Court Order"),  
 Owner prepared this Exhibit 1 and attached it to the Court Order.  
 The owner's/grantor's mailing address is not necessarily the same as the affected parcel's address.

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

TODD SMITH, DIRK REGAN and CAROL  
REGAN, JACQUELYN SHELDRIK,  
GLENN L. BOOM, and WILLIAM NELSON  
and LINDA NELSON, INDIVIDUALLY AND  
AS REPRESENTATIVES OF A CLASS OF  
PERSONS SIMILARLY SITUATED,

v. Plaintiffs,

QWEST COMMUNICATIONS COMPANY,  
LLC; SPRINT COMMUNICATIONS  
COMPANY L.P.; LEVEL 3  
COMMUNICATIONS, LLC; and WILTEL  
COMMUNICATIONS, LLC,  
Defendants.

CASE NO. 3:11-cv-02599-TEH

ECF DOCUMENT  
I hereby attest and certify that this is a printed copy of a  
document which was electronically filed with the United States  
District Court for the Northern District of California.

Date Filed:

RICHARD W. WISNING, Clerk  
By: THEOPHANO NUDO Deputy Clerk

EASEMENT DEED BY COURT ORDER  
IN SETTLEMENT OF LANDOWNER ACTION

WHEREAS, the parties to the above-captioned class action (the "Action") entered into a  
California Class Settlement Agreement, as of September 5, 2012, (the "Settlement Agreement")  
(terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in  
the Settlement Agreement);

WHEREAS, on June 24, 2013, the Court entered a final Order and Judgment approving  
the Settlement Agreement and ordering that this Action may be settled as a class action on behalf  
of the following class:

[A] class under the Settlement Agreement (the "Settlement Class"),  
defined as follows:

a class comprising all Persons who own or who claim to own, for any  
period of time during a Compensation Period, any Covered Property, except for:  
(1) Right-of-Way Providers and their predecessors, successors, parents,  
subsidiaries, and affiliates, past or present; (2) federal, state, and local  
governmental entities; (3) Native American nations and tribes; or (4) any Person  
who files a valid and timely exclusion on or before the Opt-Out Deadline.

1 maintain (including aerial patrol), renew, rebuild, replace, upgrade, expand, relocate, and remove  
2 fiber optic cables, copper cables, coaxial cables or other cables through which voice, data, video  
3 or other signals are transmitted, conduits, inner ducts, hand holes, splice vaults, poles, optical or  
4 electronic equipment, regenerator huts, marker posts or signs, and other related facilities  
5 appropriate for installation, use, or maintenance of such cables (collectively, the  
6 "Telecommunications Cable System"), in, on, over, under, through and/or across the Easement  
7 Premises. The Easement Premises means all that real property that (a) either (i) is included  
8 within a parcel of property that is described in Exhibit 1 or (ii) has a common boundary with a  
9 parcel of property described in Exhibit 1 (the "Grantor's Property") (for purposes of this  
10 Telecommunications Cable System Easement Deed, a parcel of property shall be deemed to have  
11 a common boundary with the Easement Premises if it is separated by a non-navigable river or a  
12 street, road, or highway, other than a numbered state or federal highway) and that (b) (i) is or  
13 was used as a railroad right of way ("Railroad Right of Way") and (ii) is on a side of the  
14 centerline of the Railroad Right of Way that is next to the Grantor's Property (the "Grantor  
15 Side"), and (iii) extends no more than ten (10) feet on each side of the Grantee's  
16 Telecommunications Cable System (A) as it existed on November 21, 2012 (B) where the  
17 actively used components of the Grantee's Telecommunications Cable System are moved or  
18 placed, provided, however, that only a single 20-foot easement per moved component may exist  
19 at any point in time in the Easement Premises, and the width of the moved component's  
20 Easement Premises shall be reduced on one side and increased by an equal linear footage on the  
21 other side wherever necessary in order that it shall in all places remain solely within the limits of  
22 a single Grantor Side of the Railroad Right of Way, and (C) where new components are installed  
23 to connect the existing Telecommunications Cable System to the edge of the Right of Way. The  
24  
25  
26  
27



1 Grantor may have for any damages to Grantor's property outside of the Easement Premises  
2 caused by Grantee's action. If Grantee's action causes damage to any of Grantor's existing  
3 improvements, including houses, garages, shops, sheds, and fences, or growing crops, which are  
4 within the Easement Premises, Grantee shall pay reasonable compensation to the Grantor for  
5 such damage to the extent provided by law.  
6

7 From and after June 24, 2013, subject to all the restrictions and limitations stated herein,  
8 the Easement includes the right to construct and install additional components of a  
9 Telecommunications Cable System within the Easement Premises. Grantee agrees that unless  
10 (a) it is required to do so by the railroad or other owner of Railroad Right of Way or (b) it is  
11 commercially reasonable under the circumstances to do so, it will not install additional  
12 components of a Telecommunications Cable System in the area of the Easement Premises that is  
13 outside a parallel fence constructed by the railroad or other owner of Railroad Right of Way or is  
14 actually being used by the Grantor or its successor, provided, however, that the foregoing shall  
15 not be binding upon Grantee if Grantee's Telecommunications Cable System is currently located  
16 within such area. If Grantee's action causes damage to any of Grantor's existing improvements,  
17 including houses, garages, shops, sheds, and fences, or growing crops, which are within the  
18 Easement Premises, Grantee shall pay reasonable compensation to the Grantor for such damage  
19 to the extent provided by law.  
20

21 The Easement includes all rights necessary to the lawful occupation of the Easement  
22 Premises by an existing Telecommunications Cable System, and by any additional  
23 Telecommunications Cable System that is constructed and installed by or on behalf of Grantee in  
24 the Easement Premises and that is owned or operated by either (a) Grantee or (b) any person or  
25 entity to which Grantee sold, granted, leased, or otherwise transferred or may hereafter sell,  
26  
27

1 companies or utilities. It is further understood and agreed that Grantor retains all of its existing  
2 rights, if any, to grant, convey, assign, and restrict any and all rights (including future rights and  
3 uses) on the Easement Premises, provided, however, and notwithstanding the foregoing, that  
4 Grantor shall not use or authorize others to use the Easement Premises in a manner that interferes  
5 with or impairs in any way Grantee's Telecommunications Cable System or the exercise by  
6 Grantee of the rights granted herein.  
7

8 Subject to the terms hereof, Grantee shall have all other rights and benefits necessary or  
9 useful to the full and complete enjoyment and use of the Easement for the purposes stated herein,  
10 including the right to sell, grant, lease, or otherwise transfer all or any part of the rights in or use  
11 of the Telecommunications Cable System.

12 Grantor conveys the Easement without warranty of title to any property interest in the  
13 Easement Premises. This instrument does not address and shall not affect any real property  
14 rights, including the priority of interests, between Grantor and any railroad or between Grantee  
15 and any railroad, or any of their predecessors, successors, past or present predecessors in interest,  
16 successors in interest, successors in title, members, partners, parents, subsidiaries, affiliates,  
17 lessees, assigns, and past, current, or future licensees or assignees. This Easement is not  
18 intended to impact or diminish any railroad's existing rights or property interests in the Right of  
19 Way. This Easement shall not be construed to permit Grantee to interfere with railroad  
20 operations. This Easement also shall not permit any component of a Telecommunications Cable  
21 System to remain in a Railroad Right of Way except (a) under existing or future agreements with  
22 the railroad or (b) in any Railroad Right of Way in which no railroad operates and no railroad  
23 retains any right, title, or interest. This Easement also shall not permit any new components to  
24 be installed to connect the existing Telecommunications Cable System to the edge of the Right  
25  
26  
27

1 This instrument fully sets forth the terms and conditions of the Easement. There are no  
2 oral or other written agreements between Grantor and Grantee that modify, alter, or amend this  
3 instrument.

4 TO HAVE AND TO HOLD the Easement, rights and privileges unto Grantee, its  
5 successors and assigns in perpetuity or until such time as Grantee shall cause the Easement to be  
6 released of record.  
7

8 3. Settling Defendants may record this Easement under the terms and conditions set  
9 forth in the Settlement Agreement.

10 Date: 6/27/13



Honorable Thelton E. Henderson, Judge  
United States District Court

EXHIBIT 1  
Imperial County, CA

| DMG ID      | ASSESSOR    | T/R/S      | NAME / COMPANY NAME                    | MAILING ADDRESS  | GRANTEE                    |
|-------------|-------------|------------|--|--|----------------------------|
| CA025_00362 | 062-090-048 | 155-13E-31 | Bermudez, C & E                        | 1070 W Evan Hewes Hwy, El Centro, CA 92243                                 | Level3 Communications, LLC |
| CA025_00364 | 062-090-050 | 155-13E-31 | Cetena, Gilbert D & Eva R              | 1044 W Evan Hewes Hwy, El Centro, CA 92243                                 | Level3 Communications, LLC |
| CA025_00365 | 062-080-015 | 155-13E-32 | La Valle Sabido Inc                    | 2015 Shiber Rd, c/o Alex Abatelli Jr, El Centro, CA 92243                  | Level3 Communications, LLC |
| CA025_00366 | 064-551-014 | 155-13E-36 | Imperial Irrigation District           | PO Box 977, Imperial, CA 92251   | Level3 Communications, LLC |
| CA025_00367 | 064-551-001 | 155-13E-36 | Imperial Irrigation District           | PO Box 977, Imperial, CA 92251   | Level3 Communications, LLC |
| CA025_00368 | 064-551-012 | 155-13E-36 | Dyer Farm C & Pippin Robert III & Nora | 14330 S Commercial St, Blythe, CA 92255                                    | Level3 Communications, LLC |
| CA025_00370 | 064-551-005 | 155-13E-36 | Fernandez, Alfredo & Maria             | PO Box 352, Aprina, CA 91903   | Level3 Communications, LLC |
| CA025_00371 | 064-551-011 | 155-13E-36 | Fernandez, Alfredo & Maria             | 1250 El Dorado Ave, El Centro, CA 92243                                    | Level3 Communications, LLC |
| CA025_00372 | 064-551-010 | 155-13E-36 | Imperial Gardens Family Associates     | 151 Kalmus Dr, Costa Mesa, CA 92626  | Level3 Communications, LLC |
| CA025_00373 | 064-551-008 | 155-13E-36 | Smith, Betty                           | 785 Yucca Dr, El Centro, CA 92243  | Level3 Communications, LLC |
| CA025_00374 | 064-551-001 | 155-13E-36 | Smith, Betty                           | 785 Yucca Dr, El Centro, CA 92243  | Level3 Communications, LLC |
| CA025_00375 | 064-551-001 | 155-13E-36 | Smith, Betty                           | 785 Yucca Dr, El Centro, CA 92243  | Level3 Communications, LLC |
| CA025_00376 | 064-550-002 | 155-13E-36 | Smith, Betty                           | 785 Yucca Dr, El Centro, CA 92243  | Level3 Communications, LLC |
| CA025_00377 | 064-550-003 | 155-13E-36 | Smith, Betty                           | 785 Yucca Dr, El Centro, CA 92243  | Level3 Communications, LLC |
| CA025_00378 | 064-550-004 | 155-14E-31 | Miles, Brian                           | 940 N 14th St, El Centro, CA 92243   | Level3 Communications, LLC |
| CA025_00379 | 064-560-004 | 155-14E-31 | J A & M Edney Tr                       | PO Box 3544, El Centro, CA 92243   | Level3 Communications, LLC |
| CA025_00380 | 064-560-028 | 155-14E-31 | Sarway Stores 23 Inc                   | 1371 Oakland Blvd, 200, c/o The Vong Companies Inc, Walnut Creek, CA 94596 | Level3 Communications, LLC |
| CA025_00381 | 064-560-010 | 155-14E-31 | Garden, Ronald L & Susan B             | 1118 N Sandhurst Ln, La Verne, CA 91750                                    | Level3 Communications, LLC |
| CA025_00382 | 062-080-051 | 155-13E-32 | Abetti, C Lisa & Rosemary M            | 2015 Shiber Rd, El Centro, CA 92243  | Level3 Communications, LLC |
| CA025_00383 | 062-120-001 | 155-13E-31 | KM Properties and Land Development LLC | 1490 W Evan Hewes Hwy, El Centro, CA 92243                                 | Level3 Communications, LLC |
| CA025_00384 | 062-080-035 | 155-13E-31 | Keeney, Barbara                        | 8975 Jampiro Ave, Alhambra, CA 91822                                       | Level3 Communications, LLC |
| CA025_00385 | 062-131-003 | 155-13E-32 | Garcia, Honorio A & Lucy V             | 2020 Low Rd, El Centro, CA 92243   | Level3 Communications, LLC |
| CA025_00386 | 062-120-006 | 155-13E-31 | Figueras, James A & Priscilla          | 22325 Santa Clara St, Hayward, CA 94541                                    | Level3 Communications, LLC |
| CA025_00387 | 062-120-007 | 155-13E-32 | Robinson et al David P                 | 210 Montego Dr, Imperial, CA 92243   | Level3 Communications, LLC |
| CA025_00388 | 062-131-023 | 155-13E-32 | Favelle, Juan D & Priscilla Moly       | PO Box 304, Sorby, CA 92273  | Level3 Communications, LLC |
| CA025_00389 | 062-080-036 | 155-13E-31 | Lyons, Tyler R                         | 1592 West Evan Hewes Hwy, El Centro, CA 92243                              | Level3 Communications, LLC |

EXHIBIT 1  
Imperial County, CA

| DMS ID      | ASSESSOR    | T/R/S      | NAME / COMPANY NAME                      | MAILING ADDRESS   | GRANTEE                    |
|-------------|-------------|------------|--|---|----------------------------|
| CA025 00508 | 051-250-010 | 165-12E-12 | Seehy Properties LLC                     | 1805 Evan Hewes, PO Box 549, Seehy, CA 92273            | Level3 Communications, LLC |
| CA025 00509 | 051-430-011 | 165-12E-11 | Imperial Irrigation District             | PO Box 937, Imperial, CA 92251                          | Level3 Communications, LLC |
| CA025 00510 | 051-350-007 | 165-12E-11 | Parra, Francisco & Maria T               | PO Box 476, Imperial, CA 92251                          | Level3 Communications, LLC |
| CA025 00511 | 051-430-013 | 165-12E-11 | Imperial Irrigation District             | PO Box 476, Imperial, CA 92251                          | Level3 Communications, LLC |
| CA025 00512 | 051-250-008 | 165-12E-12 | Parra, Francisco & Maria T               | PO Box 476, Imperial, CA 92251                          | Level3 Communications, LLC |
| CA025 00513 | 051-091-001 | 165-12E-07 | Imperial Irrigation District             | PO Box 937, Imperial, CA 92251                          | Level3 Communications, LLC |
| CA025 00514 | 051-084-001 | 165-12E-07 | Mendoza et al, Carmen                    | PO Box 208, Seehy, CA 92273                             | Level3 Communications, LLC |
| CA025 00515 | 051-081-001 | 165-12E-07 | Ertes, Sam                               | PO Box 208, Seehy, CA 92273                             | Level3 Communications, LLC |
| CA025 00516 | 051-092-002 | 165-12E-07 | Parra et al, Carlos                      | 17229 Garden Ct, Seehy, CA 92273                        | Level3 Communications, LLC |
| CA025 00517 | 051-092-002 | 165-12E-07 | Acuna, Maria Lourdes                     | PO Box 830, Seehy, CA 92273                             | Level3 Communications, LLC |
| CA025 00518 | 051-430-013 | 165-12E-11 | Aguilar, Lydia                           | 371 Ross Rd, El Centro, CA 92243                        | Level3 Communications, LLC |
| CA025 00519 | 051-092-014 | 165-12E-07 | Kuhn, Heidi L                            | 1878 Derrick Rd, El Centro, CA 92243                    | Level3 Communications, LLC |
| CA025 00520 | 051-092-014 | 165-12E-07 | Kuhn, Heidi L                            | 1878 Derrick Rd, El Centro, CA 92243                    | Level3 Communications, LLC |
| CA025 00521 | 051-092-014 | 165-12E-07 | Y Ranches                                | 5263 Meadows del Mar, San Diego, CA 92130               | Level3 Communications, LLC |
| CA025 00522 | 051-092-014 | 165-12E-07 | Kuhn, Heidi L                            | 5263 Meadows del Mar, San Diego, CA 92130               | Level3 Communications, LLC |
| CA025 00523 | 051-092-014 | 165-12E-07 | Kuhn, Heidi L                            | 5263 Meadows del Mar, San Diego, CA 92130               | Level3 Communications, LLC |
| CA025 00524 | 051-092-014 | 165-12E-07 | Imperial Valley Cheese of California LLC | PO Box 267, Calmar, CA 92230                            | Level3 Communications, LLC |
| CA025 00525 | 051-020-032 | 165-12E-08 | Imperial Valley Cheese of California LLC | 1051 N 1000 W, Loga, UT, 84321                          | Level3 Communications, LLC |
| CA025 00526 | 051-020-032 | 165-12E-08 | Kuhn Farms                               | 1870 B Jeffrey Rd, c/o K & F Dairy, El Centro, CA 92243 | Level3 Communications, LLC |
| CA025 00527 | 051-020-018 | 165-12E-08 | Cruz, Edward R & Joan                    | 2370 West Hwy 80, Imperial, CA 92251                    | Level3 Communications, LLC |
| CA025 00528 | 051-120-024 | 165-12E-09 | Carranda, Tony                           | 330 W Herb Ave, El Centro, CA 92233                     | Level3 Communications, LLC |
| CA025 00529 | 051-120-025 | 165-12E-09 | Lemo, George J & Catherine V             | 2801 W Main St, El Centro, CA 92233                     | Level3 Communications, LLC |
| CA025 00530 | 051-084-003 | 165-12E-07 | FC & Mkt Tompson LLC                     | 259 S Randolph Ave, Brea, CA 92611                      | Level3 Communications, LLC |
| CA025 00531 | 051-110-066 | 165-12E-10 | Mendoza, Jesus                           | 2825-A W Evan Hewes Hwy, Imperial, CA 92251             | Level3 Communications, LLC |
| CA025 00532 | 051-130-039 | 165-12E-10 | Kuhn, Heidi L                            | 47 Medina Dr, Palm Desert, CA 92260                     | Level3 Communications, LLC |
| CA025 00533 | 051-130-039 | 165-12E-10 | Tomlinson, Frank N & Carme J             | PO Box 2577, Capistrano Beach, CA 92624                 | Level3 Communications, LLC |
| CA025 00534 | 051-440-001 | 165-12E-11 | Kuhn, Madeline L                         | 2801 W Main St, El Centro, CA 92243                     | Level3 Communications, LLC |
| CA025 00535 | 051-440-015 | 165-12E-11 | Nichols, Danny C & Antonia               | 47 Medina Dr, Palm Desert, CA 92260                     | Level3 Communications, LLC |
| CA025 00536 | 051-440-025 | 165-12E-11 | Imperial Irrigation District             | PO Box 937, Imperial, CA 92251                          | Level3 Communications, LLC |
| CA025 00537 | 051-091-003 | 165-14E-05 | Mohrly, Edwin C & Mary C                 | 1805 Bass Cove, El Centro, CA 92243                     | Level3 Communications, LLC |
| CA025 00538 | 051-091-003 | 165-14E-05 | Stimpson, Betty G                        | 1778 Villanova Dr, Power, CA 92064                      | Level3 Communications, LLC |

| DMS ID      | ASSESSOR    | PARCEL ID   | T/R/S      | NAME / COMPANY NAME                    | MAILING ADDRESS   | GRANTEE                    |
|-------------|-------------|-------------|------------|--|---|----------------------------|
| CA025 00590 | 056-060-045 | 056-060-045 | 165-21E-7  | Green Environmental Services Inc       | 40 Lang Rd, Fairfield, NJ, 07007                                    | Writel Communications, LLC |
| CA025 00591 | 056-060-031 | 056-060-031 | 165-21E-7  | Watson, Robert C                       | 4016 Rock Hill Dr, Edinboro, CA, 92028                              | Writel Communications, LLC |
| CA025 00593 | 056-060-022 | 056-060-022 | 165-21E-7  | Sanchez et al, R & L M                 | 822 Mesa Verde, Vista City, CA, 92083                               | Writel Communications, LLC |
| CA025 00594 | 056-060-023 | 056-060-023 | 165-21E-7  | Blitt, George A                        | 14726 El Monte Rd, Lakeland, CA, 92040                              | Writel Communications, LLC |
| CA025 00595 | 056-060-018 | 056-060-018 | 165-21E-7  | French, William H                      | 6559 5 Lay Ln, Gold Canyon, AZ, 85118                               | Writel Communications, LLC |
| CA025 00597 | 056-060-012 | 056-060-012 | 165-21E-7  | Pilot Knob Corp                        | 2 Center of World Pk, Felicity, CA, 92283                           | Writel Communications, LLC |
| CA025 00598 | 056-460-047 | 056-460-047 | 165-21E-22 | Blitt, Jacques A & Felicia L           | 2 Center of World Pk, Felicity, CA, 92283                           | Writel Communications, LLC |
| CA025 00600 | 056-470-034 | 056-470-034 | 165-21E-21 | Blitt, Jacques A & Felicia L           | 2 Center of World Pk, Felicity, CA, 92283                           | Writel Communications, LLC |
| CA025 00601 | 021-290-013 | 021-290-013 | 115-14E-12 | IID - Trust Lands                      | PO Box 937, Attn General Manager, Imperial, CA, 92251               | Writel Communications, LLC |
| CA025 00618 | 056-470-030 | 056-470-030 | 165-21E-20 | USA For Shirley VP Ropp PG             | 1661 S 4th St, Attn Margaret Goodie - BLM Mgr, El Centro, CA, 92243 | Writel Communications, LLC |
| CA025 00619 | 056-470-036 | 056-470-036 | 165-21E-20 | USA For Shirley VP Ropp PG             | 1661 S 4th St, Attn Margaret Goodie - BLM Mgr, El Centro, CA, 92243 | Writel Communications, LLC |
| CA025 00621 | 056-460-009 | 056-460-009 | 165-21E-21 | Elter Telecasting Co of Arizona<br>LLC | 8191 Center St, La Mesa, CA, 91942                                  | Writel Communications, LLC |
| CA025 00622 | 056-460-010 | 056-460-010 | 165-21E-22 | Glenn, Thomas R & Terrence J           | 7950 Jones Branch Dr, c/o Branch CO Inc Tax Dept, McLean, VA, 22107 | Writel Communications, LLC |
| CA025 00623 | 056-460-011 | 056-460-011 | 165-21E-22 | Griffin, James A                       | 19557 Valley Ford Dr, Cottonwood, CA, 96027                         | Writel Communications, LLC |
| CA025 00624 | 056-470-036 | 056-470-036 | 165-21E-22 | Commin-Kroob, Guido F                  | 5551 Kenwood Way, Buena Park, CA, 90611                             | Writel Communications, LLC |
| CA025 00625 | 056-470-036 | 056-470-036 | 165-21E-22 | Blitt, Jacques A & Felicia L           | 2111 Whirlwind Park Ave, Sarasota, FL, 34249                        | Writel Communications, LLC |
| CA025 00626 | 056-470-035 | 056-470-035 | 165-21E-21 | Blitt, Jacques A & Felicia L           | One Center of The World Plaza, Felicity, CA, 92283                  | Writel Communications, LLC |
| CA025 00627 | 056-460-048 | 056-460-048 | 165-21E-22 | Lemon, John R & Diane M                | One Center of The World Plaza, Felicity, CA, 92283                  | Writel Communications, LLC |
| CA025 00628 | 056-460-047 | 056-460-047 | 165-21E-22 | Lemon, John R & Diane M                | One Center of The World Plaza, Felicity, CA, 92283                  | Writel Communications, LLC |
| CA025 00629 | 056-460-008 | 056-460-008 | 165-21E-26 | Roman Catholic Bishop of San Diego     | PO Box 1176, Whitehaven, CA, 92283                                  | Writel Communications, LLC |
| CA025 00630 | 021-340-003 | 021-340-003 | 115-14E-13 | Cutter, Andrew & Marlene               | 290 River Wood Dr, Branney, CA, 92287                               | Writel Communications, LLC |
| CA025 00716 | 044-351-024 | 044-351-024 | 155-14E-31 | Moh, Nello                             | 156 Hamilton Way, El Centro, CA, 92243                              | Writel Communications, LLC |
| CA025 00717 | 044-351-015 | 044-351-015 | 155-14E-31 | Quality Quarters Co LLC                | 429 W Main St, El Centro, CA, 92243                                 | Writel Communications, LLC |

EXHIBIT 1  
Imperial County, CA

**EXHIBIT 1**  
**Imperial County, CA**

| <b>DMS ID</b> | <b>ASSESSOR PARCEL ID</b> | <b>T/R/S</b> | <b>NAME / COMPANY NAME</b>        | <b>MAILING ADDRESS</b>                                     | <b>GRANTEE</b>             |
|---------------|---------------------------|--------------|-----------------------------------|--|----------------------------|
| CA025_00749   | 044-361-017               | 155-14E-31   | Preciado, Jose Luis & Guadalupe G | 834 Woodward Ave, El Centro, CA, 92243                     | Level3 Communications, LLC |
| CA025_00750   | 044-361-018               | 155-14E-31   | Garcia, John M & Gloria D         | 824 Woodward Ave, El Centro, CA, 92243                     | Level3 Communications, LLC |
| CA025_00751   | 044-361-019               | 155-14E-31   | Lopez, Alfonso Luna               | 814 Woodward St, El Centro, CA, 92243                      | Level3 Communications, LLC |
| CA025_00752   | 044-361-020               | 155-14E-31   | Quality Quarters Co LLC           | 429 W Main St, El Centro, CA, 92243                        | Level3 Communications, LLC |
| CA025_00753   | 044-381-002               | 155-14E-31   | Tsoucalas, Mike                   | PO Box 421217, c/o Federal Home Loans, San Diego, CA, 9212 | Level3 Communications, LLC |
| CA025_00754   | 044-381-003               | 155-14E-31   | Villarreal, Cervando & Elvira     | 2174 R Cabrillo Ct, Calexico, CA, 92231                    | Level3 Communications, LLC |
| CA025_00755   | 044-381-004               | 155-14E-31   | Varley, Randall A                 | 1665 Ocotillo Dr, El Centro, CA, 92243                     | Level3 Communications, LLC |
| CA025_00756   | 044-381-036               | 155-14E-31   | Rose, Ronnie Lynn                 | 558 Woodward Ave, El Centro, CA, 92243                     | Level3 Communications, LLC |
| CA025_00757   | 044-381-006               | 155-14E-31   | Nelid, Ramond J                   | PO Box 3667, El Centro, CA, 92244                          | Level3 Communications, LLC |
| CA025_00758   | 044-381-007               | 155-14E-31   | Mederos, Humberto L               | 546 Woodward Ave, El Centro, CA, 92243                     | Level3 Communications, LLC |
| CA025_00759   | 044-381-008               | 155-14E-31   | Alva, Raymond & Rosa              | 534 Woodward, El Centro, CA, 92243                         | Level3 Communications, LLC |
| CA025_00760   | 044-381-009               | 155-14E-31   | Del Valle, Jose A & Maria J       | 526 Woodward Ave, El Centro, CA, 92243                     | Level3 Communications, LLC |
| CA025_00761   | 044-381-010               | 155-14E-32   | Guislain, Charles P               | 518 Woodward Ave, El Centro, CA, 92243                     | Level3 Communications, LLC |
| CA025_00762   | 044-381-011               | 155-14E-32   | Patel et al, Vilaykumar & Nalini  | 850 Adams Ave, El Centro, CA, 92243                        | Level3 Communications, LLC |
| CA025_00763   | 044-381-012               | 155-14E-32   | Alvarez, Francisco B & Martha C   | 294 N 21th St, El Centro, CA, 92243                        | Level3 Communications, LLC |
| CA025_00764   | 044-381-013               | 155-14E-32   | Martinez, Maria Teresa            | 815 N 5th St, El Centro, CA, 92243                         | Level3 Communications, LLC |
| CA025_00765   | 044-381-022               | 155-14E-32   | Nevarez et al, Gina L             | 631 Tiger Lily Ln, Imperial, CA, 92251                     | Level3 Communications, LLC |
| CA025_00766   | 044-381-034               | 155-14E-32   | Estrada, Gregorio & Maria         | 450 Euclid Ave, El Centro, CA, 92243                       | Level3 Communications, LLC |
| CA025_00767   | 044-381-035               | 155-14E-32   | Estrada, Gregorio & Maria         | 450 Euclid Ave, El Centro, CA, 92243                       | Level3 Communications, LLC |
| CA025_00769   | 044-381-024               | 155-14E-32   | Jeffrey O & Cheryl E Lyon Tr      | 1778 Lotus Ave, El Centro, CA, 92243                       | Level3 Communications, LLC |
| CA025_00777   | 021-030-020               | 11S-14E-4    | Swink, George                     | PO Box 232307, Leucadia, CA, 92023                         | WITel Communications, LLC  |
| CA025_00783   | 05E-590-011               | 16S-22E-23   | Tovar Family LP                   | 2261 E 27th Way, Yuma, AZ, 85365                           | Level3 Communications, LLC |

**RECORDING REQUESTED BY**  
**IMPERIAL COUNTY PUBLIC WORKS**

**AND WHEN RECORDED RETURN TO:**

**IMPERIAL COUNTY PUBLIC WORKS**  
**155 SOUTH 11<sup>TH</sup> STREET**  
**EL CENTRO, CA 92243**

Recorded in Official Records, IMPERIAL COUNTY

**CHUCK STOREY**  
COUNTY CLERK/RECORDER

P PUBLIC

Doc#: **2017028554**



\* \$ R 0 0 0 0 2 8 1 7 0 7 \$ \*

12/28/2017  
02:53 PM  
IsabelVargas

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| Titles: 1 | Pages: 4 |
| Fees      | 14.00    |
| Taxes     | 0.00     |
| Other     | 0.00     |
| PAID      | 14.00    |

**BOOK: 23 PAGES: 7-9**

**MAP COVER SHEET**  
**RECORD OF SURVEY**  
**I.C.S.R. No 681**

**LEGAL DESCRIPTION:**

**PORTIONS OF TRACT 37, T13 SO R18 EAST, SBM IN AN UNINCORPORATED AREA**  
**OF THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA**

**GRANTORS:**

**SPRINKLE, BETTY J/ICSR 681**  
**LEBLANC, EUGENE LOUIS JR/ICSR 681**  
**TRACT 37/ICSR 681**  
**T13 SO R18 EAST SBM/ICSR 681**  
**ICSR 681/T13 SO R18 EAST SBM**

**Unofficial Copy**



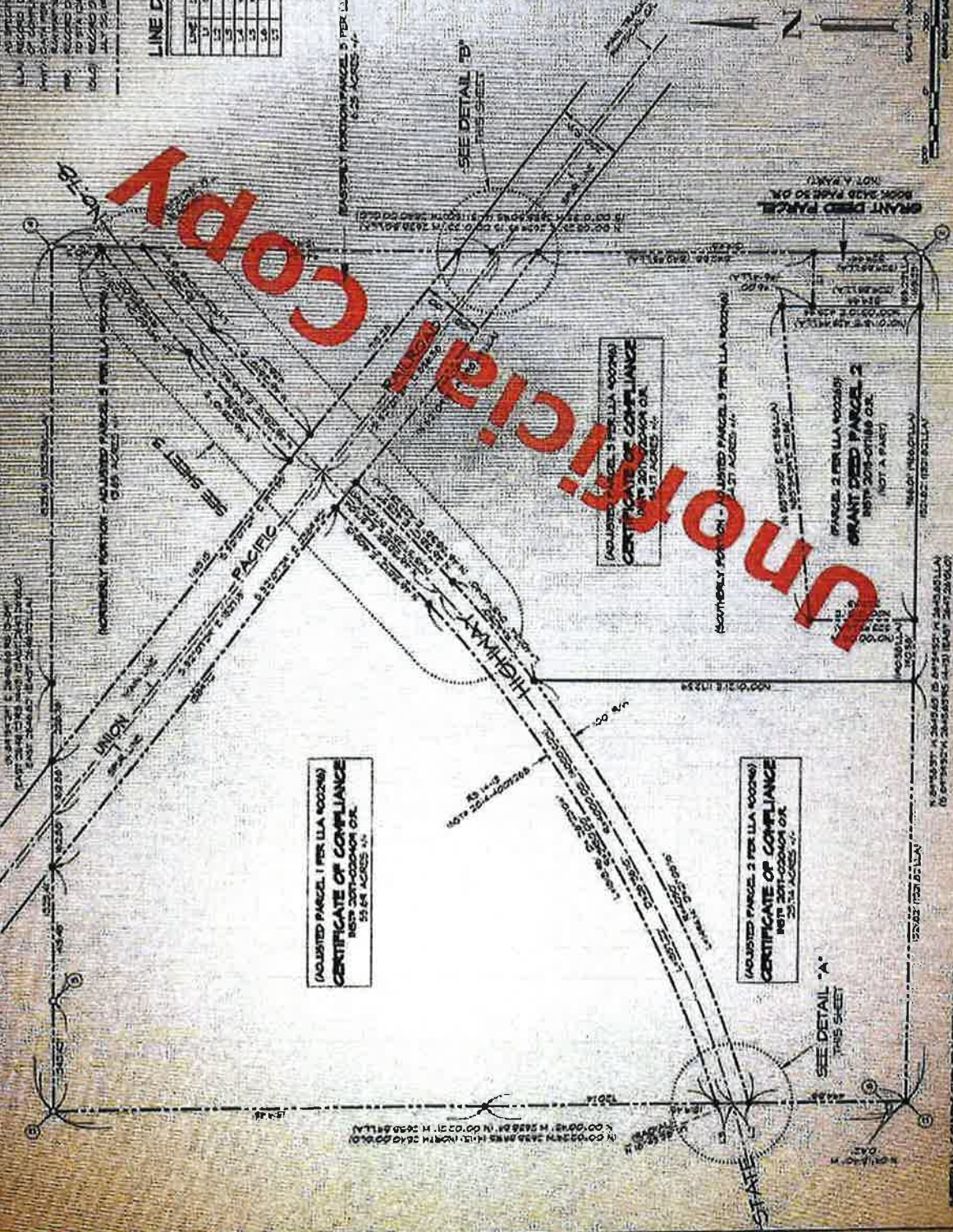
**RECORD OF SURVEY**  
 PORTION OF TRACT FOR RICE SEW  
 IN AN UNINCORPORATED AREA OF THE COUNTY OF IMPERIAL STATE OF CALIFORNIA

**LEGEND:**

- 1. ALL LINES AND POINTS SHOWN ARE TO BE CONSIDERED AS THE BOUNDARIES OF THE TRACT.
- 2. ALL LINES AND POINTS SHOWN ARE TO BE CONSIDERED AS THE BOUNDARIES OF THE TRACT.
- 3. ALL LINES AND POINTS SHOWN ARE TO BE CONSIDERED AS THE BOUNDARIES OF THE TRACT.
- 4. ALL LINES AND POINTS SHOWN ARE TO BE CONSIDERED AS THE BOUNDARIES OF THE TRACT.
- 5. ALL LINES AND POINTS SHOWN ARE TO BE CONSIDERED AS THE BOUNDARIES OF THE TRACT.
- 6. ALL LINES AND POINTS SHOWN ARE TO BE CONSIDERED AS THE BOUNDARIES OF THE TRACT.
- 7. ALL LINES AND POINTS SHOWN ARE TO BE CONSIDERED AS THE BOUNDARIES OF THE TRACT.
- 8. ALL LINES AND POINTS SHOWN ARE TO BE CONSIDERED AS THE BOUNDARIES OF THE TRACT.
- 9. ALL LINES AND POINTS SHOWN ARE TO BE CONSIDERED AS THE BOUNDARIES OF THE TRACT.
- 10. ALL LINES AND POINTS SHOWN ARE TO BE CONSIDERED AS THE BOUNDARIES OF THE TRACT.

**LINE DATA TABLE:**

| LINE | LENGTH | BEARING     | COORDINATES |
|------|--------|-------------|-------------|
| L1   | 100.00 | N00°00'00"W | 100.000000  |
| L2   | 100.00 | N00°00'00"W | 100.000000  |
| L3   | 100.00 | N00°00'00"W | 100.000000  |
| L4   | 100.00 | N00°00'00"W | 100.000000  |
| L5   | 100.00 | N00°00'00"W | 100.000000  |
| L6   | 100.00 | N00°00'00"W | 100.000000  |
| L7   | 100.00 | N00°00'00"W | 100.000000  |



(ADJUSTED PARCEL 1 PER I.L.A. 100206)  
**CERTIFICATE OF COMPLIANCE**  
 WITH 2017-000-001 OR  
 21.15 ACRES ±

(ADJUSTED PARCEL 2 PER I.L.A. 100206)  
**CERTIFICATE OF COMPLIANCE**  
 WITH 2017-000-001 OR  
 21.15 ACRES ±



DEVELOPMENT DESIGN & ENGINEERING  
 1000 W. 10TH ST. SUITE 100  
 SAN DIEGO, CA 92101  
 TEL: 619-594-1111  
 FAX: 619-594-1112  
 WWW: WWW.DDESIGN.COM

IMPERIAL COUNTY SURVEY REF. NO. 664

# Narrative Overview

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CitySwitch seeks approval for a Conditional Use Permit ("CUP"), a Height Variance ("Variance") and any other permits or approvals necessary in order to install a communications facility on property located at 637-639 Sidewinder Rd N, Felicity, CA 92283. CitySwitch proposes to erect this tower and will be offering it as a shared facility to Union Pacific (with whom CitySwitch already has a commitment), AT&T Mobility, and any other communication carriers that have a need for a facility in this area. CitySwitch thus submits this Application (as that term is defined in Sections 92404.01 and 92405.01 of the Imperial County Land Use Code (the "Code")) seeking a CUP and Variance for the siting and construction of a new communication facility.

The proposed site is located in a S-2, Open Space/Preservation zone. Pursuant to Sections 90519.02(d) of the Code, Communication Facilities are allowed in this district with CUP approval. The property consists of a railroad line in the desert, located approximately 1,200' north of the on-ramp to I-8.

The wireless communications facility that CitySwitch is proposing to install on the property for Union Pacific and AT&T is necessary to provide critical communications for the railroad line and uninterrupted AT&T wireless services to the residents and visitors of Felicity and the surrounding area, including wireless telephone service, voice paging, messaging and wireless internet and broadband data transmission. All registered wireless providers' technology operate at various radio frequency bands allocated by the FCC as part of their license.

Wireless systems operate on a grid system where overlapping cells mesh together, forming a seamless network. No single site can function as a stand-alone entity as each site is interconnected, forming the network. The technical criteria for establishing cell sites are very exacting as to the location and height. The proposed site at 637-639 Sidewinder Rd N, Felicity, CA 92283 is within the geographic area deemed necessary by radio frequency engineers for the anchor wireless telecommunications providers to provide uninterrupted services.

In accordance with Sections 92402.01s and 92405.01 of the Code, CitySwitch is submitting this Application to install a new Communications Facility. The proposed new communications

# Compliance with Section 92404.01 – General Requirements for Communications Facilities

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All new, altered and re-permitted communication facilities in unincorporated areas of Imperial County, with the exception of those exempted under Section 92401.03, shall meet the following general requirements, regardless of the zone in which they are located:

- A. Zones. Wireless communication facilities may be located in all base zones which allow such facilities, upon approval of a conditional use permit as described below.

**Telecommunications towers, along with related equipment are allowed with CUP approval in the S-2 Open Space/Preservation zone pursuant to Section 90519.02(d) of the ordinance.**

- B. Use Permit Required. All wireless communication facilities and all wired or fiber regeneration facilities other than those designated as exempt under Section 92401.03 require a conditional use permit (CUP). To obtain a conditional use permit, a hearing is required before either the planning director or the planning commission, as provided for in Title 9.

**The proposed wireless communications facility is not exempt under Section 92401.03, therefore CitySwitch has applied for a CUP, and will follow the CUP process provided for in Title 9.**

- C. Building Permit Required. All communication facilities shall require a building permit issued by the county of Imperial.

**If and when the CUP has been approved, CitySwitch will apply for the necessary building permits through Imperial County.**

- D. Design Consistency with the Surrounding Environment. To the maximum extent feasible, all wireless communication facilities and all regeneration facilities shall blend in with the predominant features of the existing natural and/or built environments in which they are located. To this end, co-location, stealth mounts, structure mounts and ground mounts are particularly encouraged.

**Due to the diminutive size of the parcel and the tower's location adjacent to the railroad tracks in the desert, there will be little impact on the surrounding environment.**

5. If an operator wishes to apply for an exception to these height limitations, then the facility shall be subject to the provisions at Title 9 relating to conditional use permits and variances hearing processes.

**The proposed tower height is 180'-0" and a height variance has been applied for as part of this application.**

- F. Screening. All communication facilities shall be screened to the maximum extent possible, pursuant to the following requirements.
  1. Ground- and tower-mounted antennas and all sound structures shall be located within areas where substantial screening by vegetation, landform and/or buildings can be achieved. Additional vegetation and/or other screening may be required as a condition of approval. Each structural screening shall be based on a recommendation from the planning department having addressed the visual impacts, which in some instance may, in fact, warrant no screening.

**No screening is proposed with this application. The proposed tower site is within the railroad right-of-way in the desert with no residential structures in the area.**

2. The projection of structure-mounted antennas from the face of the structure to which they are attached shall be minimized.

**The proposed wireless communications facility is a new tower, not a co-location on an existing structure. Therefore, this section does not apply.**

3. Roof-mounted antennas shall be set back from the edge of the roof a distance greater than or equal to the height of the antenna, except when the antennas are fully screened. For roofmounted antennas, a screening structure that is architecturally compatible with the building on which it is mounted may also be required as a condition of approval. Antenna panels mounted flush on the outside of the parapet wall of an existing building and painted to match the exterior of the building may be allowed.

**The proposed wireless communications facility is a new tower, not a co-location on an existing structure. Therefore, this section does not apply.**

- G. Radio Frequency Exposure. No communication facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such facilities, a

their zones. Such structures shall appear architecturally compatible (as determined by the planning director evaluating the facility on the basis of color and materials) with their surroundings and be designed to minimize their visual impact. To meet this requirement, underground vaults may be required.

**The proposed facility will be in compliance with all local, state and federal guidelines, therefore the zero setback will be applicable. Additionally, the equipment will be architecturally compatible with the rest of the communications facility and surrounding area.**

- L. Roads and Parking. Communication facilities shall be served by the minimum roads and parking areas necessary and shall use existing roads and parking areas whenever possible.

**A 12' wide gravel access road is proposed to run parallel to the train tracks in the Union Pacific right-of-way. The access road will connect to Sidewinder Road N., just south of the tracks.**

- M. Provisions for Future Co-location. All commercial communication facilities shall be encouraged to promote future facility and site sharing. Technical evidence will be provided as to the infeasibility either technical and/or economic, of co-location or grouping prior to the issuance of a new use permit for a facility that would not be considered to be co-located or grouped under this ordinance.

**There is an existing tower owned by SBA Structures, LLC which is located approximately 0.36 miles southeast of the proposed tower site. AT&T is currently co-located on that tower, however, the lease rate has sharply increased over the term of the agreement and has caused an economic burden which is shown in the attached Sworn Statement of Spencer Gambrell in Support of New Tower Construction from AT&T Mobility Services LLC. As shown on the drawings the proposed tower is designed to potentially add five additional future carriers.**

- N. Removal Upon Discontinuation of Use. All equipment associated with a communication facility shall be removed within one hundred eighty (180) days of the discontinuation of the use and the site shall be restored to its original pre-construction condition. The operator's agreeing to such removal and allowing the county access across private property to effect such removal shall be a condition of approval of each permit issued. At its discretion, the county may require a financial guarantee acceptable to the county to ensure removal.

**CitySwitch agrees to removal of the tower in the event it is no longer in use for more than 180 days as a condition of the Conditional Use approval.**

- b. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend them into the natural setting and surrounding buildings.

**The proposed support equipment will consist of galvanized metal equipment cabinets that are similar to gym lockers. The materials will match the tower and fit in with the natural surroundings.**

- c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobstructive as possible.

**The proposed wireless communications facility is a new tower, not a co-location on an existing structure, therefore this provision does not apply.**

- S. Lighting. Towers shall not artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views and community.

**The proposed tower is going to be 170'-0" with a 10'-0" lightning rod for a total height of 180'-0" which is below the 200' threshold requiring lighting per the FAA, therefore no lighting will be provided.**

- T. State or Federal Requirements. All towers must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations as mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.

**The proposed tower will meet and / or exceed all FAA, FCC and any other agencies of the State of California or federal government with authority to regulate towers and antennas. In the event of a change in regulations, CitySwitch and the providers co-located on the tower will make their equipment compliant.**

- U. Building Codes; Safety Standards. To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the county concludes that a tower fails to comply with such codes and

- Z. Signs. No signs shall be allowed on an antenna or tower except as may be required by law or another permitting or licensing agency.

**The only signage displayed on the communications facility site will be that which is required by federal regulations, specifically those signs needed for health and safety reasons.**

- AA. Buildings and Support Equipment. Buildings and support equipment associated with antennas or towers shall comply with requirements of Title 9.

**All support equipment used in the communications facility will comply with the requirements of Title 9.**

- BB. Multiple Antenna/Tower Plan. Imperial County encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.

**CitySwitch is submitting three (3) total applications for sites within Imperial County.**

- b. The facility either 1) does not require an RF environmental evaluation report as described in Section 92401.08, or 2) the RF environmental evaluation report for the facility shows that the cumulative radio-frequency energy emitted by the facility and any nearby facilities will be consistent with FCC regulations.

**The proposed installation is not required to include a RF Environmental Evaluation Report as spelled out in Section 92401.08.**

- c. The facility blends in with its existing environment and will not have significant adverse visual impacts.

**The proposed tower is being located within an existing railroad right-of-way in the desert and will not have a significant adverse visual impact on surrounding area.**

3. Administrative Approval Process. The planning director may administratively approve a proposed communication facility by using the following process:
  - a. Each applicant for administrative approval shall apply to the planning director providing the information and fees set forth in Section 92401.09 of this ordinance.
  - b. The planning director shall review the application for administrative approval and determine if the proposed use complies with Sections 92401.04 and 92401.05 of this ordinance.
  - c. The planning director shall respond to each such application within sixty (60) days after receiving it by either approving or denying the application.
  - d. In connection with any such administrative approval, the planning director may, in order to encourage shared use, administratively waive any setback requirements or separation distances between towers in the base zone by up to fifty percent (50%).
  - e. In connection with any such administrative approval, the planning director may, in order to encourage the use of monopoles, administratively allow the reconstruction of an existing tower to monopole construction.
  - f. If an administrative approval is denied, the applicant shall file an application for a conditional use permit pursuant to Section 91401.05B. prior to filing any special appeal that may be available under the Title 9.

**The proposed wireless telecommunications facility requires a Conditional Use Permit and a Height Variance, therefore this site does not meet the criteria for an Administratively Approved site.**

4. List of Administratively Approved Uses. The following uses may be approved by the planning director after conducting an administrative review:



- (iv) The onsite relocation of a tower which comes within the separation distances to residential units or residentially zoned lands shall only be permitted when approved by the planning director.
- c. New towers in nonresidential zones. Locating any new tower in a nonresidential zone other than industrial or heavy commercial, provided a licensed professional engineer certifies that the tower can structurally accommodate the number of shared users proposed by the applicant; the planning director concludes the tower is in conformity with the goals set forth in [Section] 92401.00 and the requirements of Section 92401.04; the tower meets all setback and separation requirements of the base zone; and the tower meets the following height and usage criteria:
  - (1) For a single user, up to ninety (90) feet in height;
  - (2) For two users, up to one hundred twenty (120) feet in height; and
  - (3) For three or more users, up to one hundred twenty (120) feet in height; and
  - (4) For four or more users up to one hundred eighty (180) feet in height.
- d. Locating any alternative tower structure in a zone other than industrial or heavy commercial that in the judgment of the planning director is in conformity with the goals set forth in Section 92401.00 of this ordinance.
- e. Installing a cable microcell network through the use of multiple low-powered transmitters/receivers attached to existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.

**The proposed wireless telecommunications facility requires a CUP and a Variance for height. Therefore, this site does not meet the criteria for an Administratively Approved site.**

- B. Conditional Use Permit before the planning commission. All other communication facilities or any facility requiring an exception to these regulations shall require a conditional use permit with a public hearing before the planning commission.
  - 1. Qualifying Facilities. A conditional use permit is required for any communication facility that is not exempt under these regulations and that does not qualify for a conditional use permit before the planning director.

**The proposed 170'-0" monopole tower is not exempt under Section 92401, therefore a Conditional Use Permit and Variance for height are required.**

- 2. Required Findings. In order for the planning commission to approve a proposed communication facility under a conditional use permit, the commission shall make the findings required for a conditional use permit, as well as the following additional findings:

**The proposed location is within the Union Pacific Railroad right-of-way and will be designed to minimize the adverse effects of this application. Further, CitySwitch will work with the County Officials to provide the best possible design for the proposed site.**

6. Professional Engineer. Any information of an engineering nature that the applicant submits, whether civil, mechanical or electrical, shall be certified by a licensed professional engineer.

**All required information relating to the engineering of this site will be certified by a California licensed professional engineer, including all civil, mechanical or electrical documents.**

**Companies like CitySwitch have worked with local emergency service agencies to allow for the placement of equipment in and around their facilities. Additionally, with AT&T co-locating on the tower, 5G will be a part of the installation. 5G technology is used by first responders to create a network which supports their needs in the time of crisis which will provide better response times and services by local emergency services.**

- B. The proposed use is consistent with the purpose of the zone or sub-zone within which the use will be located;

**The proposed communications facility is consistent with the with the purpose of the zone within which it will be located. Per Section 90519.00, the "primary intent" of the S-2 zone is "to preserve the cultural, biological, and open space areas that are rich and natural as well as cultural resources. The S-2 zone is dominated by native desert habitat and stark topographic features. While certain uses are allowed within the S-2 zone, such uses must be compatible with the intent of the open space and conservation element of the general plan."**

**In this case, a communications facility is an allowable use in the zone with conditional use approval. The site is located approximately 0.23 miles north of I-8 and will serve to ensure a robust wireless network for AT&T and Union Pacific in this area.**

- C. The proposed use is listed as a use within the zone or sub-zone or is found to be similar to a listed conditional use according to the procedures of Section 90203.10;

**Communications towers are an articulated conditional use in the S-2 (Open Space/Preservation) zone pursuant to Section 90519.02(d) of the Imperial County Zoning Ordinance.**

- D. The proposed use meets the minimum requirements of this title applicable to the use and complies with all applicable laws, ordinances and regulations of the county of Imperial and the state of California;

**The proposed communications facility meets the minimum requirements of this title applicable to the use as addressed above and complies with all applicable laws, ordinances and regulations of Imperial County and the State of California.**

- E. The proposed use will not be detrimental to the health, safety, and welfare of the public or to the property and residents in the vicinity;

**Due to the diminutive size of the proposed equipment, it will not have an adverse effect on the surrounding properties nor the character of the area. Wireless**

# Variance Standards

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The planning director, the planning commission and/or the board of supervisors, shall approve, approve subject to conditions or disapprove a variance with the following findings:

A. Findings. Approval or conditional approval may be granted only if the director/commission/board of supervisors first determines that the variance satisfies the criteria set forth in Government Code Section 65906, and the following findings can be made:

1. That there are special circumstances applicable to the property described in the variance application, that do not apply generally to the property or class of use in the same zone or vicinity;

**The proposed location has special circumstances that are not applicable to other properties in the area. The proposed location is within Union Pacific's right-of-way and will host communication equipment for railroad use and will also service wireless providers. The property is located in a railroad right-of-way within the desert, there are no residential properties in the area that would be affected.**

2. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or vicinity in which the property is located;

**The proposed variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or vicinity. The area is a mostly undeveloped area in the desert located approximately 0.33 miles north of Interstate 8. The location is far removed from any residential uses.**

3. That because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of zoning laws is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications;

**There are special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of zoning laws is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classifications. The proposed location is within Union Pacific's right-of-way and will host communication equipment that will service wireless providers along with the railroad's needs. The height required for the proposed tower is necessary to allow for the Union Pacific Railroad and AT&T to utilize the tower to provide the necessary signal.**

**B. Conditions of Approval.** In approving a variance, the director/commission/board of supervisors may impose such conditions deemed necessary to enable making the findings listed under subsection A of this section.

**C. Denial of Variance.** Where the director/commission/board of supervisors cannot make the findings under subsection A of this section (with or without conditions) the variance shall be denied.

- B. Findings. The alternatives analysis shall show whether or not the proposed siting and design would have the least possible environmental and visual effect on the community and whether any alternative site or design is available that would allow for issuance of a conditional use permit before the planning director for the facility.

**The proposed location for the CitySwitch communications facility is within the right-of-way of the Union Pacific railroad line northwest of I-8 and Sidewinder Rd N. The proposed location is in the desert in an unpopulated area. With the SBA tower being located 0.36 miles southeast of the proposed facility, Imperial County has already deemed that a communications facility would be visually acceptable in this area. Additionally, CitySwitch has chosen to use a monopole design for the tower which is the least obtrusive design for a 170' tower in this area.**

- C. Review. The planning director may, at his or her discretion, employ on behalf of the county an independent technical expert to review this alternative analysis. The operator shall bear the reasonable costs of this review.

**Based on the information submitted in the Sworn Statement of Spencer Gambrell in Support of New Tower Construction from AT&T Mobility Services LLC, included as part of this application, CitySwitch believes a third party is not necessary, however, if deemed necessary by the planning director, CitySwitch will bear the reasonable costs for this review.**



AT&T Mobility Services LLC  
Tower Strategy  
17000 Cantrell Rd  
Little Rock, Arkansas 72201

**SWORN STATEMENT OF SPENCER GAMBRELL IN SUPPORT OF NEW TOWER  
CONSTRUCTION**

BY **CitySwitch II-A, LLC**

PULASKI COUNTY            )  
  ) ss.  
STATE OF ARKANSAS        )

**SPENCER GAMBRELL**, being first duly sworn on oath, deposes and says that:

1. I am an adult resident of the State of Arkansas and serve as Director-Network Planning for AT&T Wireless (“**AT&T**”).

2. I manage AT&T’s high-rent relocation program, under which AT&T identifies high-cost or economically burdensome antenna site leases that accommodate AT&T’s communications equipment and materially inhibits AT&T from improving or maintaining wireless services and relocates its communications equipment onto lower-cost alternative antenna site lease locations to either improve or maintain wireless coverage.

3. I am familiar with the proposed tower to be constructed by **CitySwitch II-A, LLC** (“**CitySwitch**”) at **637-639 Sidewinder Road, Felicity, California 92283 APN 056-470-002** (the “**CitySwitch Tower**”). I am also familiar with the existing communications tower (the “**SBA Tower**”) owned by **SBA Towers II, LLC (“SBA”)** which is located at 612 Sidewinder Road, Winterhaven, California 99283. Both the existing **SBA** Tower and the location of the proposed **CitySwitch** Tower are located in AT&T’s coverage search ring for this part of **Imperial County**.

4. AT&T currently leases space on the SBA Tower, along with related ground space at the base of the SBA Tower, to locate its communications equipment (the “**Wireless Facilities**”). AT&T has located its Wireless Facilities on the **SBA** Tower since **[Old site lease commencement month & year]** but AT&T

**Winterhaven  
CA 915797863**

9. Decommissioning an existing Wireless Facility in favor of moving to an alternate tower location is something AT&T will only do in limited circumstances. AT&T will bear a significant capital cost in decommissioning its Wireless Facilities installation on the SBA Tower and relocating to the CitySwitch Tower. Despite these relocation costs, the CitySwitch Tower remains a better co-location option for AT&T.

10. AT&T has made this determination because the current rents and other charges to co-locate on the SBA Tower have been categorized as high-cost as compared to other existing sites in AT&T's portfolio and the rents charged by other tower companies, such as CitySwitch.

11. AT&T has entered into nationwide development and master lease agreements with CitySwitch, which I am familiar with. Under these agreements, CitySwitch will construct, at its own expense, its own communications towers upon which AT&T will lease space to install its Wireless Facilities. AT&T does not bear any costs for the construction of a tower owned by CitySwitch.

12. Per these agreements and as is the case with the CitySwitch Tower, AT&T pays CitySwitch rent in return for 30,000 square inches of wind load surface area of loading and defined space on each tower and does not pay increased rent for additions to its Wireless Facilities provided said facilities remain within the predetermined space and loading limits. The agreed upon tower space and loading limits have taken into consideration the future additions and upgrades projected for AT&T's Wireless Facilities.

13. There are no other structures (other than the SBA Tower) located in AT&T's search ring capable of accommodating its Wireless Facilities.

14. The economic terms imposed upon AT&T by SBA to remain co-located on the SBA Tower are not cost-effective and are economically burdensome for AT&T especially when the nearby CitySwitch Tower presents a more competitive and flexible co-location option.

**The CitySwitch Tower Provides Superior Mobile Service Functionality.**

15. Technological changes and market trends in the wireless communications industry require AT&T to continuously upgrade its Wireless Facilities. AT&T is also obligated to build out FirstNet, which is our country's first nationwide integrated data network for providers of emergency services.



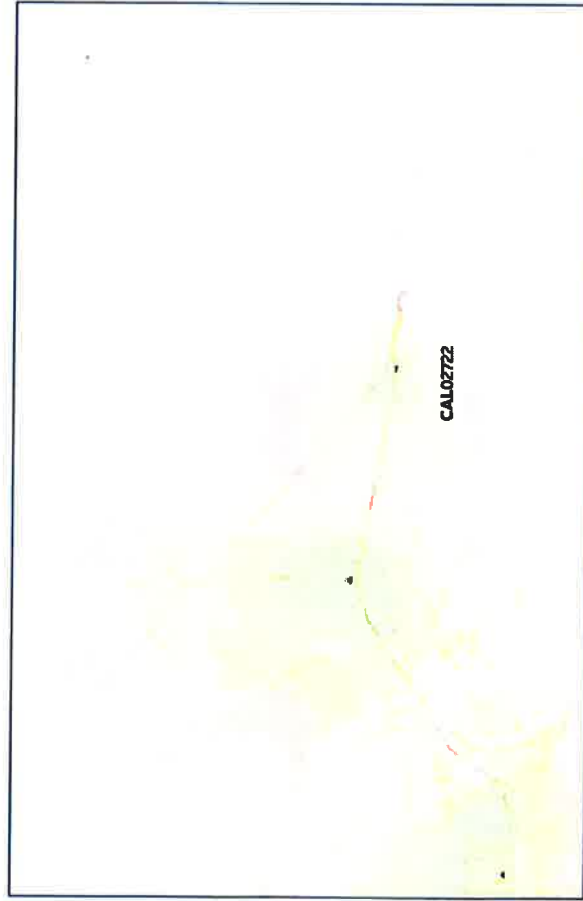
# Carrier Coverage Plot

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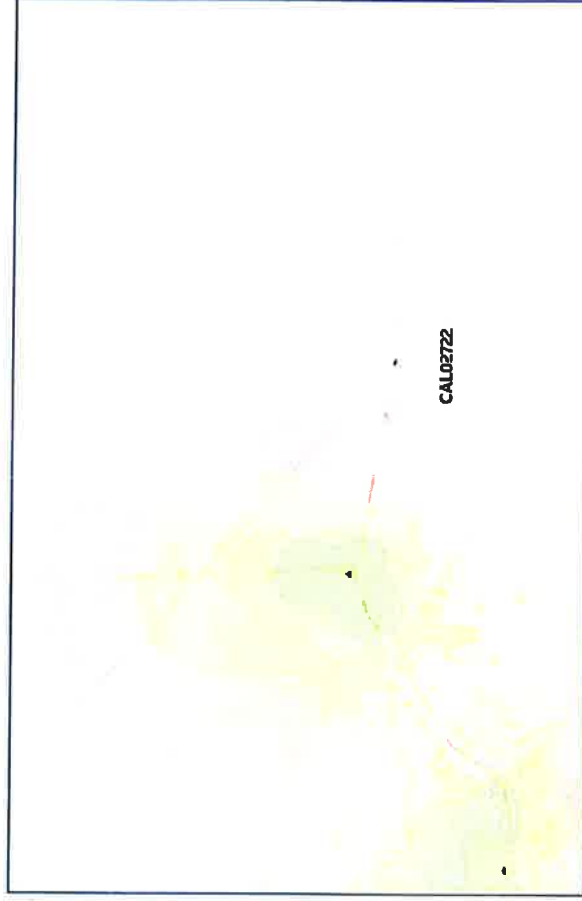
# CAL03748



Coverage with site



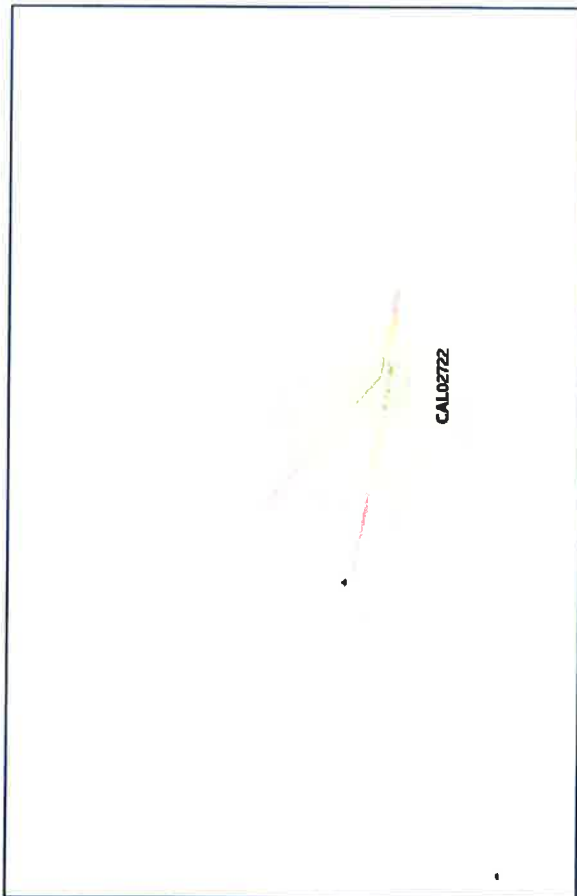
Coverage without site



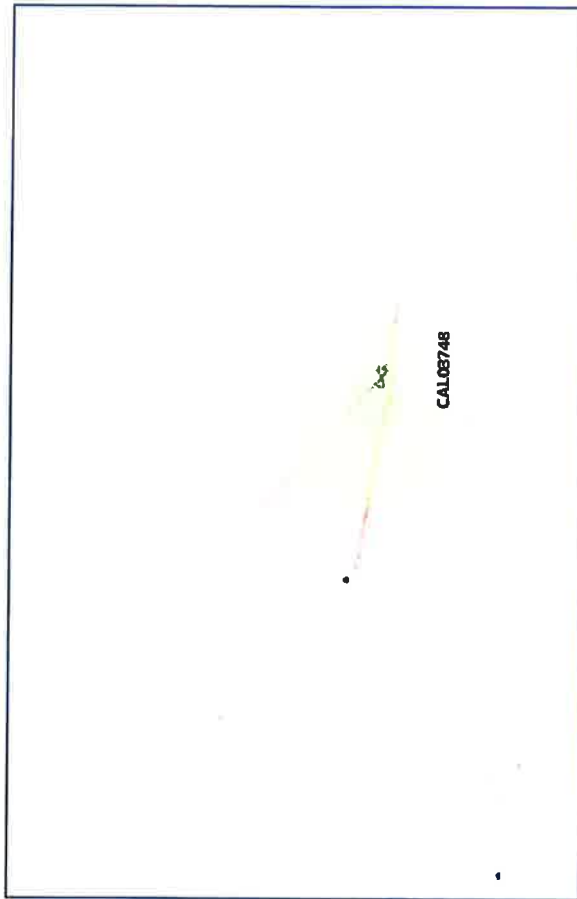
# CAL03748



Existing location coverage only



New location coverage only





Mail Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Group  
10101 Hillwood Parkway  
Fort Worth, TX 76177

Aeronautical Study No.  
2022-AWP-12871-OE

Issued Date: 08/22/2022

Leslie Lindeman  
Palm-Tech Consulting, LLC  
11365 Little Bear Way  
Boca Raton, FL 33428

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

|            |   |
|------------|---|
| Structure: | Antenna Tower Winterhaven   |
| Location:  | Winterhaven, CA   |
| Latitude:  | 32-45-01.45N NAD 83   |
| Longitude: | 114-45-20.84W   |
| Heights:   | 285 feet site elevation (SF)<br>170 feet above ground level (AGL)<br>455 feet above mean sea level (AMSL) |

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed in accordance with FAA Advisory circular 70/7460-1 M.

This determination expires on 02/22/2024 unless:

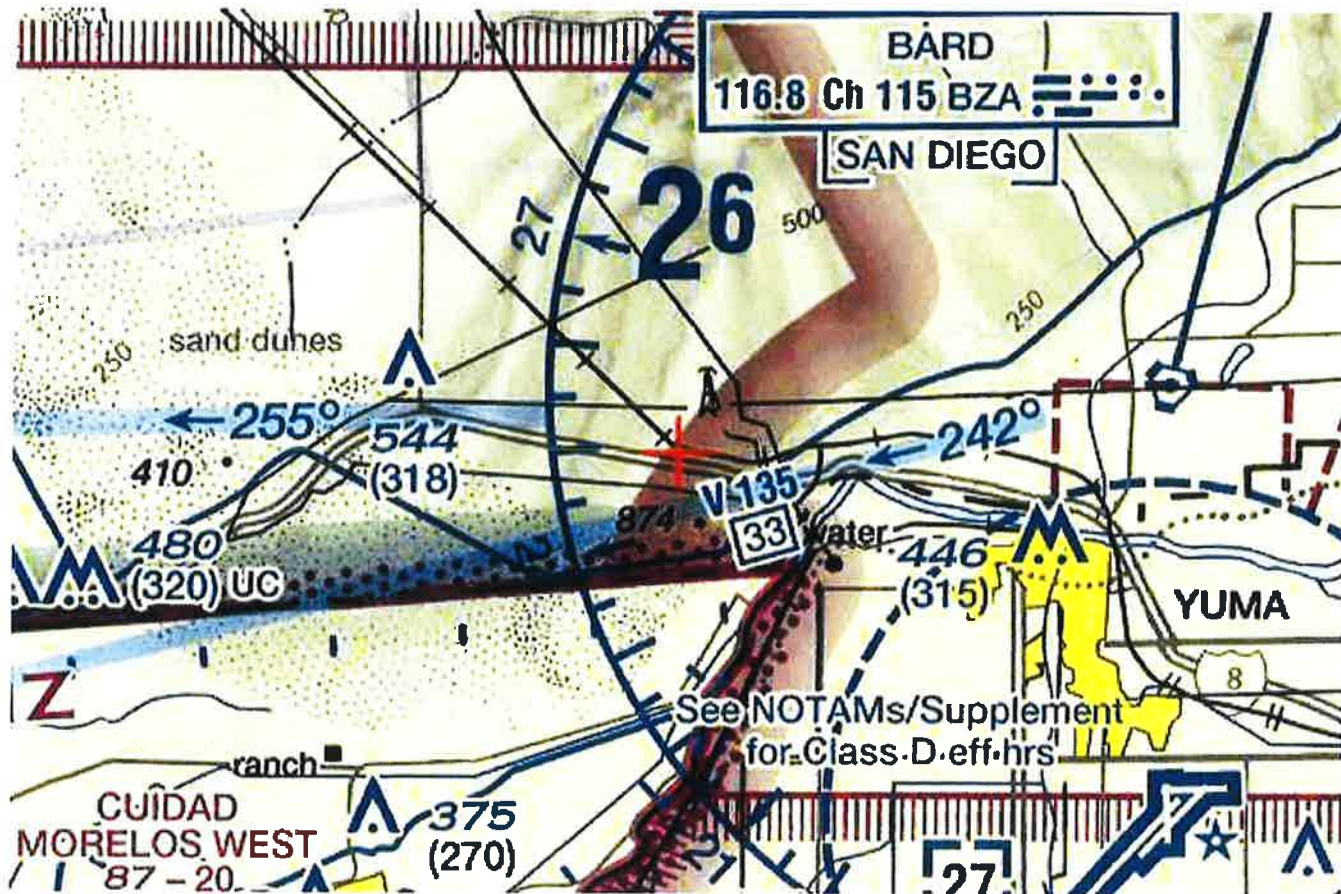
- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

**NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO**

**Frequency Data for ASN 2022-AWP-12871-OE**

| <b>LOW<br/>FREQUENCY</b> | <b>HIGH<br/>FREQUENCY</b> | <b>FREQUENCY<br/>UNIT</b> | <b>ERP</b> | <b>ERP<br/>UNIT</b> |
|--------------------------|---------------------------|---------------------------|------------|---------------------|
| 6                        | 7                         | GHz                       | 55         | dBW                 |
| 6                        | 7                         | GHz                       | 42         | dBW                 |
| 10                       | 11.7                      | GHz                       | 55         | dBW                 |
| 10                       | 11.7                      | GHz                       | 42         | dBW                 |
| 17.7                     | 19.7                      | GHz                       | 55         | dBW                 |
| 17.7                     | 19.7                      | GHz                       | 42         | dBW                 |
| 21.2                     | 23.6                      | GHz                       | 55         | dBW                 |
| 21.2                     | 23.6                      | GHz                       | 42         | dBW                 |
| 614                      | 698                       | MHz                       | 1000       | W                   |
| 614                      | 698                       | MHz                       | 2000       | W                   |
| 698                      | 806                       | MHz                       | 1000       | W                   |
| 806                      | 901                       | MHz                       | 500        | W                   |
| 806                      | 824                       | MHz                       | 500        | W                   |
| 824                      | 849                       | MHz                       | 500        | W                   |
| 851                      | 866                       | MHz                       | 500        | W                   |
| 869                      | 894                       | MHz                       | 500        | W                   |
| 896                      | 901                       | MHz                       | 500        | W                   |
| 901                      | 902                       | MHz                       | 7          | W                   |
| 929                      | 932                       | MHz                       | 3500       | W                   |
| 930                      | 931                       | MHz                       | 3500       | W                   |
| 931                      | 932                       | MHz                       | 3500       | W                   |
| 932                      | 932.5                     | MHz                       | 17         | dBW                 |
| 935                      | 940                       | MHz                       | 1000       | W                   |
| 940                      | 941                       | MHz                       | 3500       | W                   |
| 1670                     | 1675                      | MHz                       | 500        | W                   |
| 1710                     | 1755                      | MHz                       | 500        | W                   |
| 1850                     | 1910                      | MHz                       | 1640       | W                   |
| 1850                     | 1990                      | MHz                       | 1640       | W                   |
| 1930                     | 1990                      | MHz                       | 1640       | W                   |
| 1990                     | 2025                      | MHz                       | 500        | W                   |
| 2110                     | 2200                      | MHz                       | 500        | W                   |
| 2305                     | 2360                      | MHz                       | 2000       | W                   |
| 2305                     | 2310                      | MHz                       | 2000       | W                   |
| 2345                     | 2360                      | MHz                       | 2000       | W                   |
| 2496                     | 2690                      | MHz                       | 500        | W                   |

Sectional Map for ASN 2022-AWP-12871-OE



March 3, 2023

Tim Cook  
CitySwitch, LLC  
1900 Century Place NF, Suite 320  
Atlanta, GA 30345

RE: Proposed 170' Sabre Monopole for Winterhaven, CA

Dear Mr. Cook,

Upon receipt of order, we propose to design and supply the above referenced Sabre monopole for an Ultimate Wind Speed of 99 mph, Risk Category II, Exposure Category C, and Topographic Category 1, in accordance with the Telecommunications Industry Association Standard ANSI/TIA 222-H-2017 "Structural Standard for Antenna Supporting Structures, Antennas and Small Wind Turbine Support Structures". The monopole will also meet the requirements of the 2022 California Building Code.

When designed according to this standard, the wind pressures and steel strength capacities include several safety factors. Therefore, it is highly unlikely that the monopole will fail structurally in a wind event where the design wind speed is exceeded within the range of the built-in safety factors.

Should the wind speed increase beyond the capacity of the built-in safety factors, to the point of failure of one or more structural elements, the most likely location of the failure would be within the monopole shaft, above the base plate. Assuming that the wind pressure profile is similar to that used to design the monopole, the monopole will buckle at the location of the highest combined stress ratio within the monopole shaft. This is likely to result in the portion of the monopole above leaning over and remaining in a permanently deformed condition. This would effectively result in a fall radius of 30 feet or less at ground level. *Please note that this letter only applies to the above referenced monopole designed and manufactured by Sabre Industries.*

Sincerely,

Keith J. Tindall, P.E.  
Vice President, Telecom Engineering



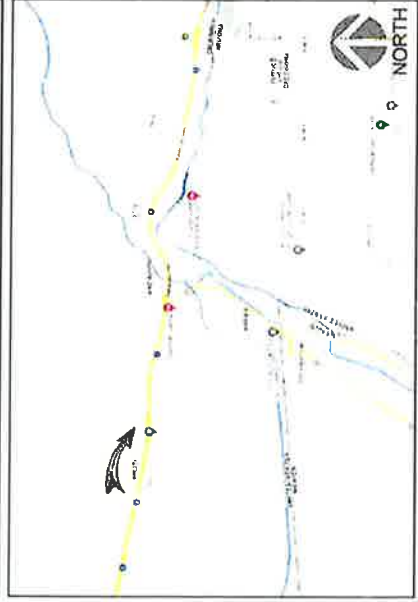
**SHEET INDEX**

| NO. | DESCRIPTION        |
|-----|--------------------|
| 1   | TITLE SHEET        |
| 2   | LAND SURVEY        |
| 3   | OVERALL SITE PLAN  |
| 4   | ENLARGED SITE PLAN |
| 5   | TOWER ELEVATION    |
| 6   |                    |
| 7   |                    |
| 8   |                    |
| 9   |                    |
| 10  |                    |
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| 13  |                    |
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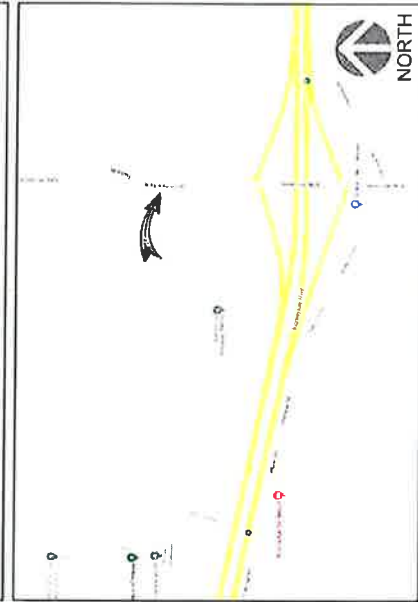
**SCOPE OF WORK**

- SCOPE OF WORK:
1. NEW FENCED TELECOMMUNICATIONS COMPOUND
  2. NEW ELECTRICAL AND FIBER UTILITIES
  3. NEW DROPPEDWAY
  4. NEW MONOPOLE TOWER

**REGIONAL MAP**



**VICINITY MAP**



**ZONING DRAWINGS**  
**NOT FOR CONSTRUCTION**

DRAWN BY: MN  
 CHECKED BY: RBA

REV: DATE DESCRIPTION  
 A 03/18/22 ZONING DRAWINGS  
 B 03/28/22 ZONING DRAWINGS  
 C 10/25/22 ZONING DRAWINGS

I HEREBY CERTIFY THAT THESE PLANS WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CONTROL AND TO THE BEST OF MY KNOWLEDGE AND BELIEF THEY COMPLY WITH ALL REQUIREMENTS OF THE GOVERNING LOCAL BUILDING CODE.

**SITE NAME:**  
 WINTERHAVEN  
**SITE ADDRESS:**  
 637-639 SIDEWINDER RD N  
 FELICITY, CA 92283  
 IMPERIAL COUNTY

**SHEET TITLE**  
 TITLE SHEET

**SHEET NUMBER**  
 T-1



**AT&T FA#**  
 10101309



**CITYSWITCH SITE #**  
 CAC002  
**CITYSWITCH FA #**  
 15797965

**SITE NAME**  
 WINTERHAVEN  
**SITE ADDRESS**  
 637-639 SIDEWINDER RD N  
 FELICITY, CA 92283  
 IMPERIAL COUNTY

**PROJECT INFORMATION**

|  |  |  |
|--|--|--|
| <p><b>APPLICANT:</b><br/>                 CITYSWITCH<br/>                 1700 CENTURY PL NE<br/>                 SUITE 320<br/>                 ATLANTA, GA 30345<br/>                 (404) 857-0859</p> | <p><b>ARCHITECT CONTACT:</b><br/>                 GLEN L HUNT III<br/>                 3470 V JASPER DR<br/>                 FELICITY, CA 92286<br/>                 (623) 443-8664<br/>                 (623) 321-1283</p>              | <p><b>ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE FOLLOWING CODES AS ADOPTED BY THE LOCAL JURISDICTION IN WHICH THESE PLANS IS TO BE CONSTRUED TO PERMIT WORK NOT CONFORMING TO THE LATEST EDITION OF THE FOLLOWING CODES:</b></p> <p><b>CODES:</b></p> <ul style="list-style-type: none"> <li>• 2019 CALIFORNIA STANDARDS CODE</li> <li>• 2019 CALIFORNIA ELECTRIC CODE</li> </ul> <p>IN THE EVENT OF CONFLICT, THE MOST RESTRICTIVE CODE SHALL PREVAIL.</p> |
| <p><b>LATITUDE:</b> 32°45'0.45" N<br/> <b>LONGITUDE:</b> 114°45'0.84" W<br/>                 -114.750788°</p>  | <p><b>APN:</b> 056-170-002<br/> <b>SITE TYPE:</b> MONOPOLE<br/> <b>JURISDICTION:</b> IMPERIAL COUNTY<br/> <b>COUNTY:</b> IMPERIAL COUNTY<br/> <b>OVERALL STRUCTURE HEIGHT:</b> 180' A.S.L.<br/> <b>GROUND ELEVATION:</b> 285' A.S.L.</p> | <p><b>TO OBTAIN LOCATION OF PARTICIPANTS UNDERGROUND FACILITIES BEFORE YOU DIG IN CALIFORNIA (EARTH), CALL TOLL FREE: 1-800-227-2600 OR www.diglokal.org</b></p> <p><b>Know what's below. Call before you dig.</b></p>   |

**PROFESSIONAL LICENSURE**

I CERTIFY THAT THESE DRAWINGS WERE PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND CONTROL AND TO THE BEST OF MY KNOWLEDGE AND BELIEF THEY COMPLY WITH THE REQUIREMENTS OF THE GOVERNING LOCAL BUILDING CODE.

**EMPRES:** \_\_\_\_\_  
**SIGNED:** \_\_\_\_\_





**ZONING DRAWINGS**  
NOT FOR CONSTRUCTION

|     |          |                 |
|-----|----------|-----------------|
| REV | DATE     | DESCRIPTION     |
| A   | 02/16/22 | ZONING DRAWINGS |
| B   | 03/29/22 | ZONING DRAWINGS |
| C   | 10/25/22 | ZONING DRAWINGS |

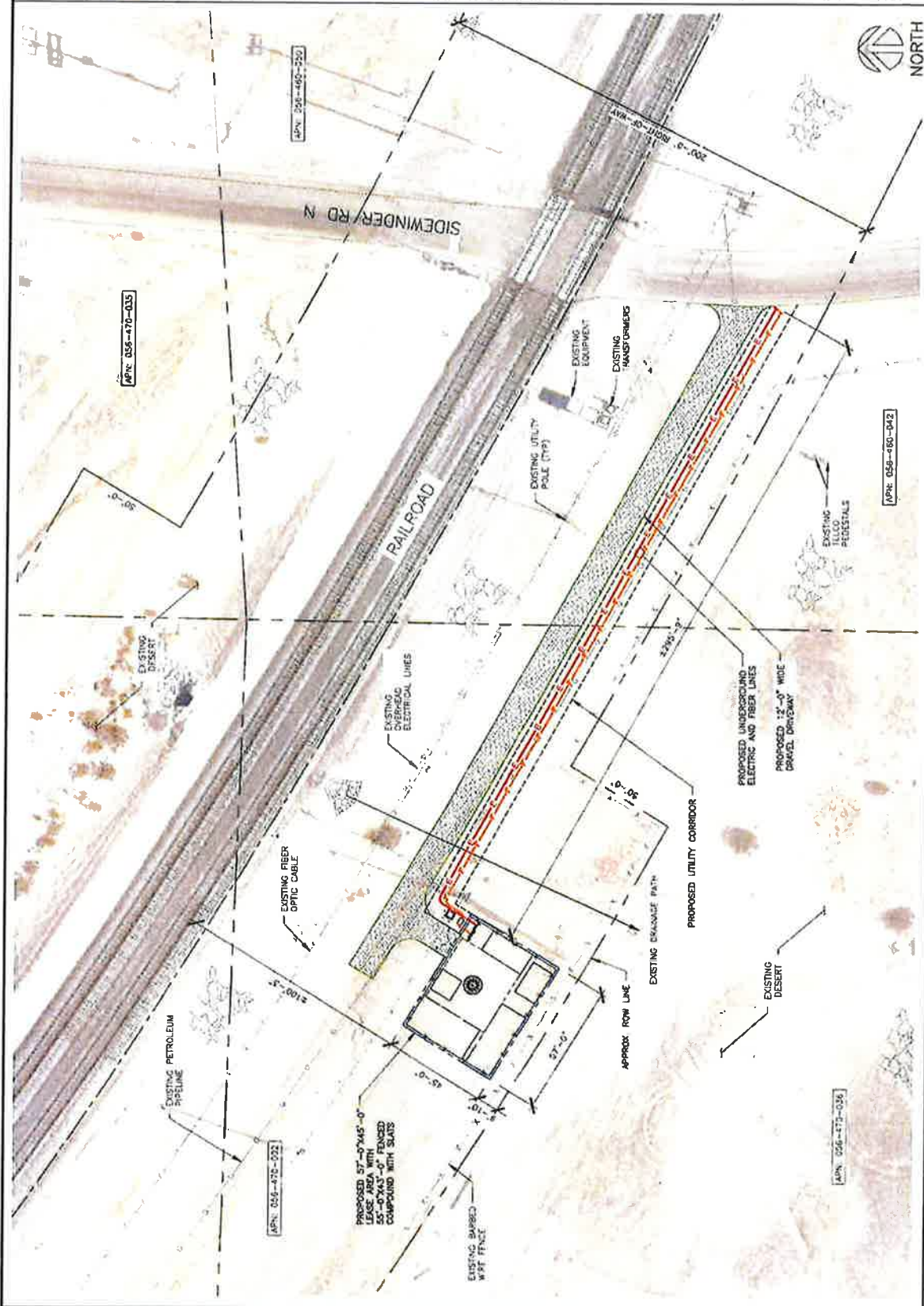
DOWN BY: MN  
CHECKED BY: RSM

\* USER CERTIFY THAT THESE PLANS WERE PREPARED BY YOU OR UNDER YOUR SUPERVISION AND THAT YOU ARE A DULY LICENSED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA.

**SITE NAME:** WINTERHAVEN  
**SITE ADDRESS:** 637-639 SIDEWINDER RD N  
PELUCITY, CA 92285  
IMPERIAL COUNTY

**SHEET TITLE:** OVERALL  
**SITE PLAN**

**SHEET NUMBER:** C-1



OVERALL SITE PLAN

SCALE: 1"=50'-0" (11x17)  
(10x) 1"=30'-0" (12x18)

THE INFORMATION CONTAINED IN THIS SET OF CONSTRUCTION DOCUMENTS IS PREPARED BY OR FOR THE ARCHITECT. ANY USE OR DISSEMINATION OF THESE DOCUMENTS BY ANY OTHER PARTY WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT IS PROHIBITED.



DAVID GLEN  
 1000 WEST 10TH AVENUE  
 TELEPHONE: 847.277.0000  
 FAX: 847.277.0000  
 info@westchesterlcc.com

ZONING DRAWINGS  
 NOT FOR CONSTRUCTION

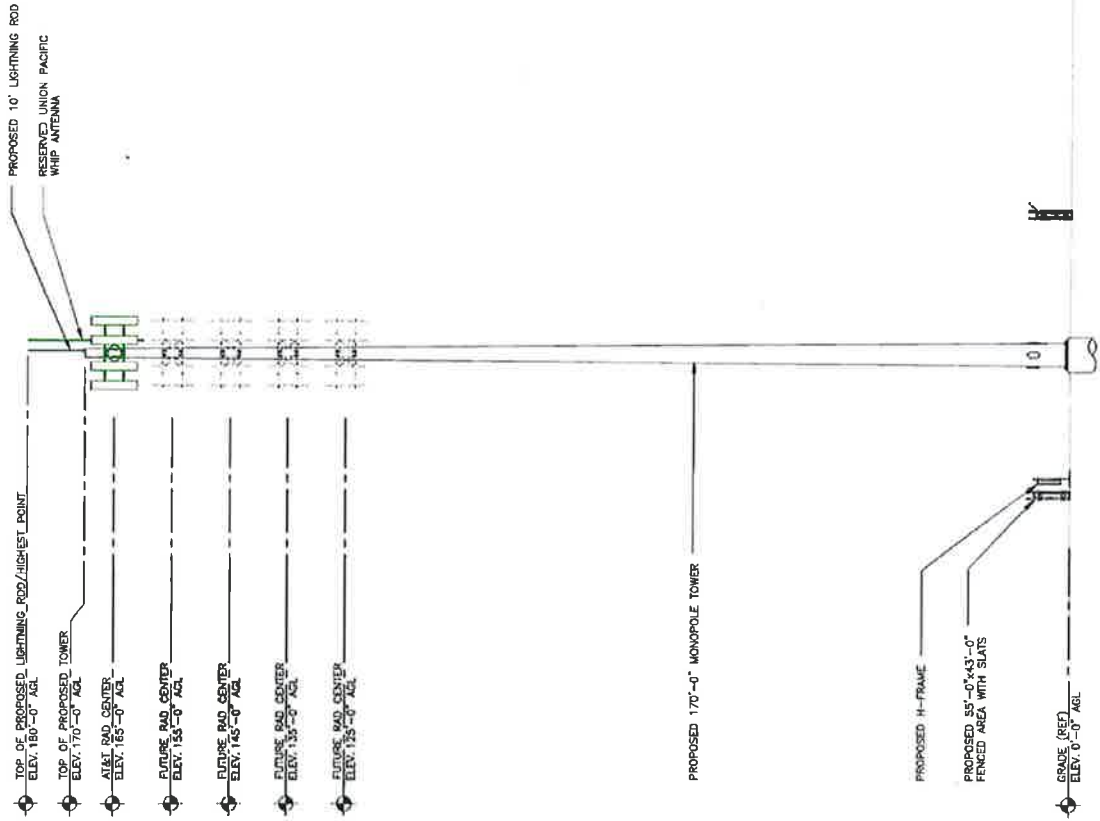
|              |          |                 |
|--------------|----------|-----------------|
| DESIGNED BY: | MIN      |                 |
| CHECKED BY:  | RSN      |                 |
| REV#         | DATE     | DESCRIPTION     |
| A            | 01/18/22 | ZONING DRAWINGS |
| B            | 02/23/22 | ZONING DRAWINGS |
| C            | 10/25/22 | ZONING DRAWINGS |

\* I HEREBY CERTIFY THAT THESE PLANS WERE PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA.

SITE NAME:  
 WINTERHAVEN  
 SITE ADDRESS:  
 637-633 WADENBURG RD N  
 FELICITY, CA 92723  
 IMPERIAL COUNTY

SHEET TITLE  
 TOWER  
 ELEVATION

SHEET NUMBER  
 A-1



TOWER ELEVATION

SCALE: 1"=30'-0" (11.1875)  
 (100' 3"=30'-0" 228.60)

1 0 5 15 30

Site Name: Winterhaven  
CitySwitch Site: CAC002  
UP Audit Number: #####

### TOWER CONSTRUCTION AGREEMENT

This Agreement, made the 3<sup>rd</sup> day of May, 2022 (the "Effective Date"), between Union Pacific Railroad Company, a Delaware corporation, having an office at 1400 Douglas Street, Omaha, Nebraska 68179, hereinafter referred to as "Licensor", and CitySwitch – II-A, LLC, a Georgia company, having an office at 1900 Century Place, Suite 320, Atlanta, Georgia 30345 hereinafter referred to as "Licensee".

The term "Premises" as used in this Agreement, refers to a rectangle measuring approximately forty-five feet (45.00'), by fifty-seven feet (57.00'), containing a total of 2,656 square feet, combined with an approximate two hundred seventy-five feet (275.00') by twelve feet (12.00') access and utility corridor containing 3,300 square feet on the parcel of land on Licensor's railroad right-of-way and located in Felicity, California, in the County of Imperial, as presented on the attached Plot Plan, described in Exhibit "A".

Licensor agrees to allow construction of a One Hundred Seventy foot (170') tower hereinafter referred to as the "Tower"), fenced compound and equipment cabinets (hereinafter referred to as the "Facilities") on the Premises for the location of Licensee's radio equipment; said Tower and Facilities shall be used by Licensee in conducting their communications activities on the Premises.

THEREFORE, in consideration of the mutual covenants herein contained, Licensor and Licensee agree as follows:

1. **GRANT:**

Licensor grants to Licensee the right to construct the Tower and Facilities together with non-exclusive rights of access for: (a) ingress and egress, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle (including trucks), and (b) the installation and maintenance of utility wires, poles, cables (including fiber optic cable), conduits, and pipes over, under, or along the Licensor's property, the location of said rights of access being limited to the locations shown on Exhibit "A" attached hereto. Licensee shall have the right to use the Premises for the location of the Tower and Facilities. Licensee shall be responsible for all costs and activities associated with the construction of the aforementioned Tower and Facilities. Equipment owned by and installed, operated and maintained by Licensee will be installed at the Premises. The Licensee's use of the Premises shall be subject to the terms and conditions of this Agreement, specifically including but not limited to, the General Terms and Conditions, attached hereto as Exhibit "B" and made a part hereof.

2. **TOWER FACILITIES:**

Licensor grants to Licensee the right to construct the Tower on the Premises for the installation of its communications antennas. The Tower and Facilities will be located within the area further defined on Exhibit "A" of this Agreement.

3. **EQUIPMENT FACILITIES:**

agrees to execute any such document reasonably required by Licensee in its operations which states this Agreement is in full force and effect, and the number of years with renewals remaining in this Agreement.

All costs for any permits, licenses, plans, specifications or any other documentation required shall be at the sole cost and expense of Licensee.

#### **7. GENERAL TERMS AND CONDITIONS:**

Licensee represents and warrants that all work on the Premises performed by Licensee, its contractors, agents and/or employees, and all entry upon and use of Licensor's property will be in strict compliance with the General Terms and Conditions.

#### **8. UTILITY SERVICE:**

Licensee shall have the non-exclusive right to locate utility lines and cables providing service to the Premises, as described in Exhibit "A", provided, however, that Licensee's utility service providers, or Licensee, as applicable, may be required to apply for and receive a "Wireline Crossing Agreement" from Licensor's Real Estate Department prior to installing any utility service to the Premises at no additional cost to such service provider(s) or Licensee. Licensor will not unreasonably delay or deny granting of any such agreement.

#### **9. RELOCATION:**

The approximate location of the Tower and Facilities will be as presented in the attached Exhibit "A". If, for engineering reasons, it is necessary for Licensee to select a different location, such relocation is subject to the approval of Licensor, in Licensor's sole discretion.

If, after the installation of the Tower and Facilities, Licensor determines that either or both constitute a material hindrance or cause material interference to railroad operations (e.g., blocking new track expansion, blocking line of sight, safety needs, etc.), Licensor may require the removal of the Tower and Facilities, as the case may be by Licensee at Licensee's sole cost and expense, within a period of (180) days (provided Licensor shall allow Licensee more than one hundred eighty (180) days to complete such removal, if in Licensor's sole discretion, allowing Licensee such additional time to complete such removal will not result in too much hindrance or interference with Licensor's operations or safety) from the date of receipt of notice from Licensor, provided that (i) such hindrance or interference affects the operation of Licensor's business or creates a safety hazard and ii) Licensee cannot promptly eliminate or minimize such hindrance or interference to an acceptable degree within the aforesaid 180-day period by performing alterations or modifications to the Tower and Facilities, as the case may be, or implementing other mitigative measures at the Premises. In such event, Licensor shall, in consultation with Licensee, use commercially reasonable efforts to designate an alternative location at the Premises upon which Licensee may relocate its Tower and Facilities. Licensee shall then have the right, at its option, to relocate its Tower and Facilities, as the case may be, to said alternative location at Licensee's sole expense. All monthly rent payable by Licensee hereunder shall abate for the time during which Licensee is prohibited from operating its existing tower and facilities at the Premises and the date upon which construction of the new Tower, Facilities and/or equipment cabinets at the alternative location is completed.

It is understood and agreed that Licensee shall own the Tower and Facilities and all related radio equipment, and/or any such improvements constructed or placed on the Premises by Licensee.

13. **OWNER'S RIGHT OF INSTALLATION:**

Licensee hereby grants to Licensor the right, reasonably exercised, to locate antennas on the Tower and related radio equipment, upon the Premises, subject to a maximum of 10,000 square inches of wind loading and availability of space upon the Tower being available at the time of Licensor's desire to exercise said right.

Licensor shall assume all costs and liabilities associated with the installation, operation and maintenance of Licensor's equipment at the Premises.

Licensee shall charge Licensor no fee for the installation, operation and maintenance of Licensor's equipment at the Premises.

14. **MAINTENANCE:**

Licensee shall (i) be responsible for any and all improvements located upon the Premises by Licensee or any approved sublicensees, including the Tower and Facilities, and (ii) shall perform whatever remedial and preventive maintenance, repairs, construction and security which may be required to properly maintain the Tower and Facilities and the equipment located thereupon or therewithin.

15. **PAYMENT:**

Effective upon the first month following the Commencement Date, Licensee shall pay Licensor [REDACTED] per year for the privileges and rights presented in this Agreement which rental shall increase by [REDACTED] percent [REDACTED] annually. At such time as the amount equal to [REDACTED] of the total gross revenue collected by Licensee from all sublicenses at the Premises exceeds the amount of the then-current annual rental, Licensee shall then begin paying to Licensor the greater of the then-current rental per year, as increased by [REDACTED] annually, or [REDACTED] of the total revenue collected annually from Licensee's sublicenses at the Premises. The annual amount shall be paid in twelve monthly increments, each equal to one-twelfth of the annual total. Each monthly payment shall be made on or before the 20th day of each month.

Licensor shall have the right, no more than once per calendar year, to inspect and audit all of Licensee's documents, agreements, and records relating to the Premises, including any documents, agreements, and records of Licensee regarding billing and collection of fees payable or paid under any agreement related to the Premises, and Licensee shall, for as long as this Agreement remains in effect and for three (3) years following any expiration or termination of this Agreement, maintain copies of all such documents and records. In the event Licensor elects to inspect and audit any such documents and records and/or the payments made by the any person related to the Premises, if Licensor determines that Licensee has failed to pay Licensor any material amounts owed to Licensor hereunder, Licensee shall, in addition to paying Licensor any amounts found by such inspection and audit to remain unpaid, reimburse Licensor for its costs to complete such inspection and audit.

- (c) Workers' Compensation insurance covering Licensee statutory liability under the workers' compensation laws of the state(s) affected by this Agreement, and Employers' Liability. If such insurance will not cover the liability of Licensee in states that require participation in state workers' compensation fund, Licensee shall comply with the laws of such states. If Licensee is self-insured, evidence of state approval must be provided.
- (d) Railroad Protective Liability insurance naming the Licensor as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The Licensee may meet this obligation with a commercial general liability policy with Endorsement CG2417 Contractual Liability - Railroads, which amends the definition of an insured contract to include construction or demolition operations on or within 50 feet of a railroad. A binder of insurance for Railroad Protective Liability must be submitted to the Licensor and the original policy or a certified duplicate original policy must be forwarded to the Licensor when available.

Where permitted by law and subject to Licensee's indemnification obligations herein, Licensee and its insurers shall endorse the required insurance policy (ies) to waive their right of subrogation against Licensor. Licensee and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody and control. Licensee's insurance shall be primary with respect to any insurance carried by Licensor. The policy (ies) required under (a) and (b) above shall provide severability of interests and shall name Licensor as an additional insured with respect to liability arising from Licensee's operations for which Licensee has legally assumed responsibility herein.

Prior to commencing the any construction work, Licensee shall furnish to Licensor certificate(s) of insurance evidencing the required coverage. The certificate(s) shall contain a provision that obligates the insurance company (ies) issuing such policy (ies) to notify Licensor in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, if such limits apply, or any cancellation at least thirty (30) days prior thereto.

The insurance policy (ies) shall be written by a reputable insurance company (ies) acceptable to Licensor or with a current Best's Insurance Guide Rating of B and Class VII or better and authorized to do business in the state(s) in which the Job Site is located.

The fact that insurance is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee and/or its contractors, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

19. **INDEMNIFICATION/HOLD HARMLESS:**

Licensee agrees that it shall not, through its actions or omissions, (i) endanger the property or employees of Licensor located at the Premises or (ii) expose any person, including but not being limited to Licensor's employees, contractors, agents or Licensees, or Licensor's property, operations or facilities to any additional hazards. Licensee shall indemnify and hold Licensor and its affiliates, and the officers, agents and employees of each, harmless against and from any and all liability, loss, damage, claims, demands, costs and expenses (including court costs and attorneys' fees) arising directly out of Licensee's use of the Premises, including, without limitation its construction activity thereon pursuant to this Agreement, except for those

- (b) In the event those portions of the Premises upon which Licensee's Tower and Facilities are located are, in Licensee's judgment, incapable of being restored, Licensor shall, upon request of and in consultation with Licensee, designate an alternative location at the Premises upon which Licensee may reconstruct its Tower and Facilities.

In the event the Premises, that portion of the Premises upon which Licensee's Tower and Facilities are located, or any significant portion of either is condemned or is otherwise subjected to a taking by any governmental authority exercising the power of eminent domain, this Agreement shall terminate as of the date upon which Licensee is required by the governmental authority to cease its operations at the Premises. Licensee shall be entitled to seek their own award against the condemning authority.

**23. ARBITRATION:**

All controversies relating to, in connection with, or arising out of this Agreement, its modification or making, the authority or obligations of the parties hereto, and whether involving the principals, agents, brokers or others who actually subscribe hereto, shall be settled by arbitration. The arbitration proceedings shall be held in the county and state in which the Premises is located and in accordance with the laws of the aforesaid state. The arbitration proceeding is to be governed by the American Arbitration Association and the "Rules of Arbitration" (hereinafter, the "Rules") as they exist at the time of the arbitration (including provisions as to payment of fees and expenses) and presided over by one arbitrator selected in accordance with the aforementioned Rules. Arbitration is the sole remedy hereunder. All notices or service in reference to arbitration or enforcement shall be deemed given if transmitted as required by the aforementioned Rules. The parties agree that any dispute or controversy related solely to an engineering matter, as mutually determined by Licensee and Licensor, shall be settled by arbitration in accordance with the foregoing, except that the one presiding arbitrator shall be a professional licensed engineer or engineering consultant selected in accordance with the Rules.

**24. FORCE MAJEURE:**

To the extent that either party to this Agreement is prevented from discharging its duties by an event of Force Majeure, such as by reason of flood, war, fire, explosion or other catastrophe or act of God, both parties shall be temporarily excused from the performance of their obligations under this Agreement until such time as the Force Majeure event has abated.

**25. INTEGRATED AGREEMENT:**

It is agreed and understood that this Agreement including the Exhibits attached hereto and made a part hereof contains all of the agreements, promises, and understandings between Licensor and Licensee and that no prior written, verbal or oral agreements, promises or understandings shall be binding upon either Licensee or Licensor in any dispute, or proceeding at law.

**26. GOVERNING LAW:**

The performance of this Agreement shall be interpreted, construed, and regulated by the laws of the state of California.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this date.

ACCEPTED BY: Licensor  
Union Pacific Railroad Company

ACCEPTED BY: Licensee  
CitySwitch II-A, LLC

BY: Chris Doble

BY: Robert Raville

PRINT NAME: CHRIS D. GOBLE

PRINT NAME: Robert Raville  
President & CEO

TITLE: Assistant Vice President - Real Estate

TITLE: \_\_\_\_\_

DATE: 5/3/2022

DATE: 4/21/22



**Exhibit A**

**Location Print Depicting the Premises**



**JOHN M. BANKS ARCHITECT**  
 1000110  
 1000110  
 1000110  
 1000110



**LEASE EXHIBIT  
 NOT FOR CONSTRUCTION**

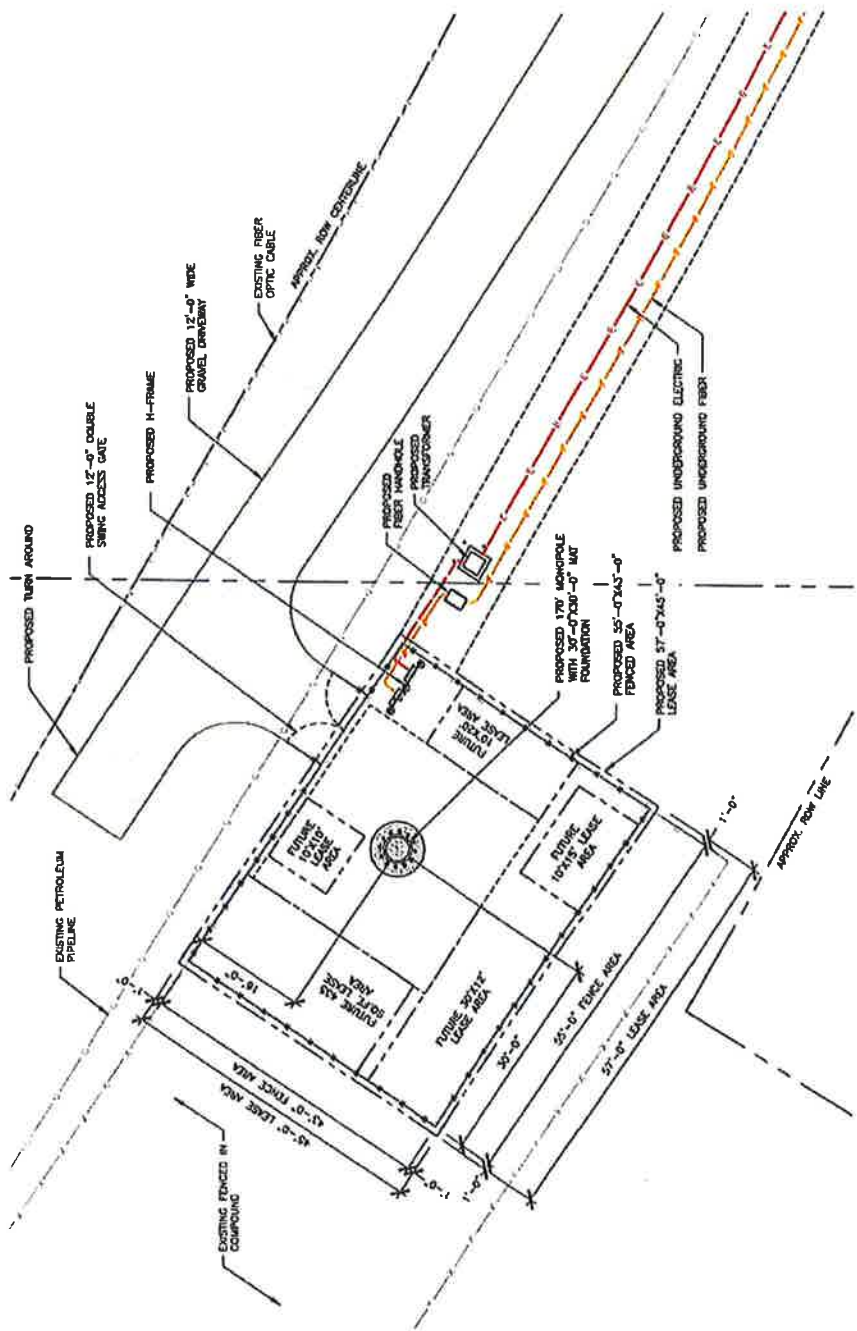
| REV | DATE     | DESCRIPTION |
|-----|----------|-------------|
| A   | 01/12/22 | ISSUED LE   |
| B   | 01/18/22 | ISSUED LE   |
| C   | 02/14/22 | ISSUED LE   |

1. REFER TO THE LEASE PLAN FOR THE PROPOSED 170' MONOPHOLE WITH 30'-0" DIA. 10' DIA. FOUNDATION. REFER TO THE LEASE PLAN FOR THE PROPOSED 55'-0" DIA. 10' DIA. FOUNDATION. REFER TO THE LEASE PLAN FOR THE PROPOSED 37'-0" DIA. 10' DIA. FOUNDATION.

PA # 1010309  
 SITE NAME: WINTERHAVEN  
 SITE ADDRESS: 637-639 SIDEWINDER RD N  
 FELICITY, CA 92283  
 IMPERIAL COUNTY

**ENLARGED SITE PLAN**

**LE-2**



ENLARGED SITE PLAN



**JOHN M BANKS  
ARCHITECT**  
1000 BARKER, L. 8010  
SAN FRANCISCO, CA 94115  
TEL: 415.777.4000  
FAX: 415.777.4000  
EMAIL: JMBANKS@CITYSWITCHSERVICES.COM

**WESTCHESTER**  
1000 BARKER, L. 8010  
SAN FRANCISCO, CA 94115  
TEL: 415.777.4000  
FAX: 415.777.4000  
EMAIL: JMBANKS@CITYSWITCHSERVICES.COM

**LEASE EXHIBIT  
NOT FOR CONSTRUCTION**

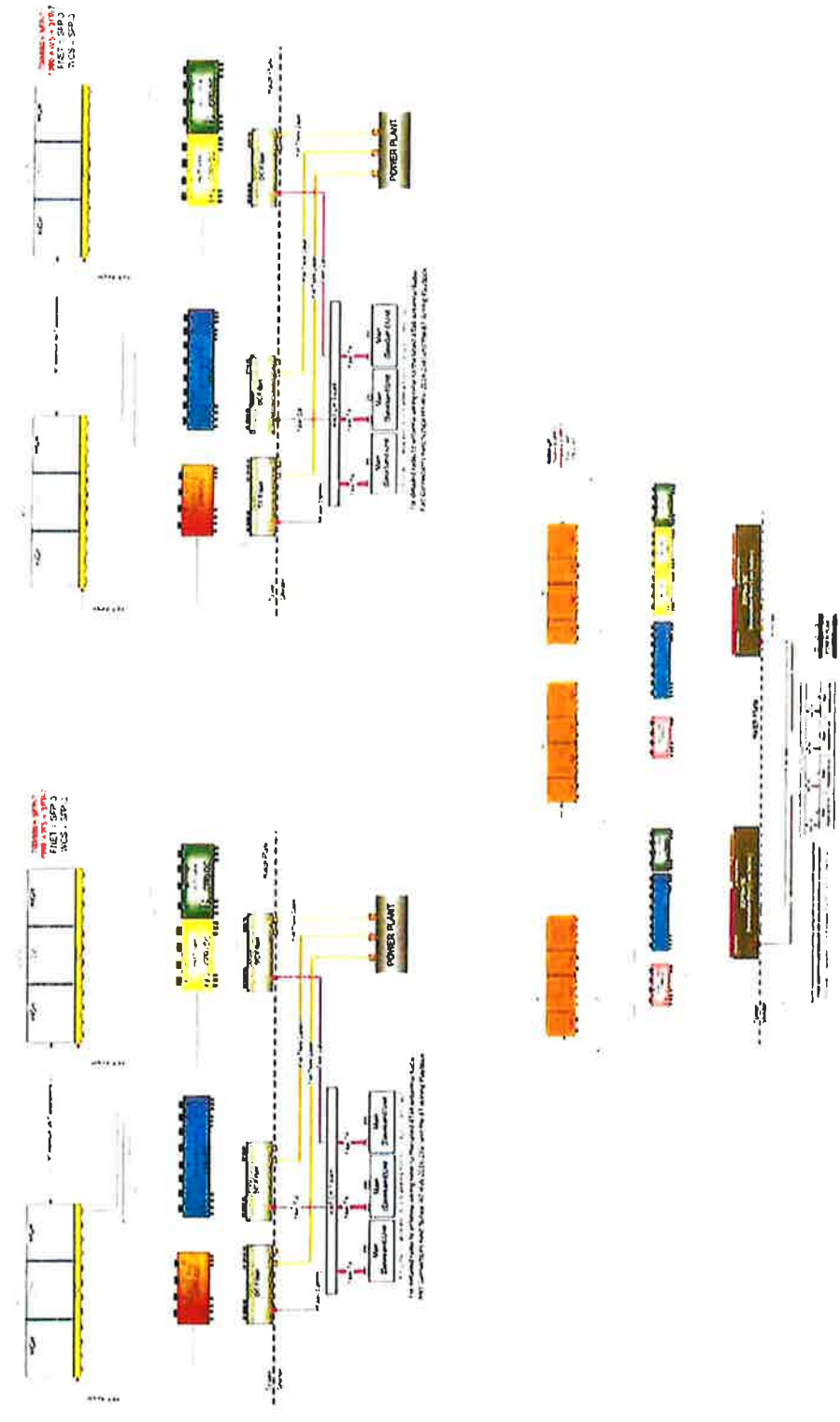
| REV# | DATE     | DESCRIPTION   |
|------|----------|---------------|
| A    | 01/12/22 | LEASE EXHIBIT |
| B    | 01/18/22 | REVISED LE    |
| C    | 03/14/22 | REVISED LE    |

I HEREBY CERTIFY THAT I AM AN ARCHITECT REGISTERED IN THE STATE OF CALIFORNIA AND THAT I AM A duly licensed professional engineer in the State of California.

FA # 10101309  
SITE NAME  
WINTERHAVEN  
637-639 SOWANDER RD N  
FELICITY, CA 92283  
IMPERIAL COUNTY

SHEET TITLE  
**PLUMBING  
DIAGRAM**

SHEET NUMBER  
**LE-4**



1 SCALE - N.T.S.

PLUMBING DIAGRAM

health, environmental or communication permits or licenses required to perform any work on Licensee's Tower and/or Facilities.

**Section 2. NOTIFICATION; SAFETY; PROTECTION OF RAILROAD OPERATIONS.**

It is understood and recognized that safety and continuity of the Licensor's operations and communications, and the safety of Licensor's personnel, property and the public are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all work by Licensee and the presence of Licensee on Licensor's Property, the safety standards set forth in this Agreement will be strictly adhered to by Licensee.

A. **Entry on to Licensor's Property.** Licensee and its contractors are strictly prohibited from entry onto Licensor's Property without first providing notification to Licensor as set forth in this Section.

B. **Work on Licensor's Property.** Licensee and its contractor are strictly prohibited from commencing any work associated with Licensee's Tower and Facilities without Licensor's written approval that the work will be in strict compliance with the "ENGINEERING REQUIREMENTS; PERMITS" Section of this Exhibit B. Upon Licensor's approval of work, the Licensee agrees to notify Licensor in accordance with the notification requirements set forth in this Section.

C. **Advance Notification Requirements.**

(i) The Licensee agrees to notify the Licensor at least ten (10) working days in advance of any entry on to Licensor's Property or work by Licensee that will take place at a distance of more than twenty-five (25) feet of any track. Licensee agrees to provide advance notice to Licensor at least thirty (30) working days in advance of proposed performance of any entry on to Licensor's Property or work by Licensee in which any person, equipment, machinery, tool(s), material(s), or thing(s) will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track.

(ii) Upon receipt of such notifications, the Licensor, in its sole and absolute discretion, will determine whether (a) Licensee's contractor will need to enter into Licensor's then current form of Contractor Right of Entry Agreement and/or (b) a flagman or other special protective or safety measures (any of the foregoing, collectively "Flagging Services") are needed.

(iii) Licensee or its contractor shall not commence any work until (a) such determinations have been made by Licensor, (b) Licensee has complied with the "PROTECTION OF SUBSURFACE FACILITIES ON LICENSOR'S PROPERTY" of this Exhibit B, and (c) Licensor has provided Licensee written authorization to commence work.

D. **Inspections.** If Licensee needs to enter Licensor's Property in order to perform an inspection of Licensee's Tower and/or Facilities, the same advance notification requirements as set forth in this Section shall apply. Licensee may use unmanned aircraft systems ("UAS") to inspect

[http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up\\_pdf\\_nativedocs/pdf\\_up\\_supplier\\_safety\\_req.pdf](http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_nativedocs/pdf_up_supplier_safety_req.pdf)

(ii) Licensee shall keep the job site on Licensor's property free from safety and health hazards and ensure that their employees are competent and adequately trained in all safety and health aspects of the work.

(iii) Licensor shall have the right, if it so elects, to provide any support it deems necessary for the safety of Licensor's operations and trackage during Licensee's or its contractor's construction, maintenance, repair, renewal, modification, relocation, reconstruction, or removal of Licensee's Tower and Facilities. In the event Licensor provides such support, Licensor shall invoice Licensee, and Licensee shall pay Licensor as set forth in the "LICENSEE'S PAYMENT OF EXPENSES" Section of this **Exhibit B**.

G. **Compliance With Laws.** Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the Licensee's Tower and Facilities. The Licensee shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Licensor's Property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Licensor, the Licensee shall reimburse, and to the extent it may lawfully do so, indemnify the Licensor for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Licensor, to defend such action free of cost, charge, or expense to the Licensor.

H. **No Interference or Delays.**

(i) Licensee represents and warrants that all parts of Licensee's Tower and Facilities within and outside of the limits of Licensor's property will not interfere whatsoever with the constant, continuous, and uninterrupted use and operation of the tracks, property, and facilities of Licensor, and nothing shall be done, suffered to be done or permitted by Licensee at any time that would in any manner obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Licensor's tracks or facilities, or any communication or signal lines, installations of any appurtenances thereof, or the operations of others lawfully occupying or using the Licensor's property or facilities, including, without limitation, Licensor's lessees, licensees, and any other railroad company. Licensee shall take all suitable precaution to prevent interference (by induction, leakage of electricity, or otherwise) with the operation of the signal, communication lines or other installations or facilities of Licensor or of its tenants. If, at any time, the operation or maintenance of Licensee's Tower and/or Facilities result in any electrostatic effects which Licensor deems undesirable or harmful, or causes interference with the operation of the signal, communication lines or other installations or facilities, as now existing or which may hereafter be provided by Licensor and/or its tenants, Licensee shall, at the sole cost and expense of Licensee, immediately modify or take action as may be necessary to eliminate such interference.

(e.g., wayside horn, switching, and signal control systems), and utility systems and facilities (e.g., electrical lines, natural gas and water main pipelines and distribution / supply lines, and sewer pipes and lines). Protection of such facilities is of extreme importance since any break in or damage to the facilities could, among other things, disrupt service to users, result in business interruption and loss of revenue and profits, result in injury or death to persons and damage to property, cause other economic losses and/or create safety risks. In addition to the notifications required under the "NOTIFICATION; SAFETY; PROTECTION OF RAILROAD OPERATIONS" in Section of this Exhibit B, prior to the performance of any work on Licensor's property, Licensee shall (i) comply with all one-call and local and state requirements for subsurface detection, and (ii) exercise due diligence in an effort to determine from the Licensor and all appropriate utilities, telecommunications companies, etc., if such facilities are present, and (iii) telephone Licensor during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Licensor's property to be used by Licensee. If it is, Licensee shall telephone the telecommunications company(ies) involved, and arrange for a cable locator, make arrangements for relocation or other protection of the fiber optic cable, all at Licensee's expense, and will not commence any work on Licensor's property until all such protection or relocation has been completed.

N. **Crossing Railroad Tracks.** Licensee and its contractor are strictly prohibited from vehicular crossings of Licensor's tracks except at existing open public crossings.

O. **Emergencies.** If, at any time, an emergency arises involving Licensee's Tower and/or Facilities, Licensee or its contractor shall immediately contact Licensor's Response Management Communications Center at (888) 877-7267 (a 24-hour line).

P. **Maintenance of Right-of-Way.** Licensor shall not be responsible for maintenance of Licensee's occupancy areas or for clearing or removal of trees, shrubs, plants, ice, snow or debris therefrom. If requested to do so by Licensee and if Licensor agrees to extend maintenance to cover Licensee's area of occupation at Licensee's request and to cut, mow and/or treat such right-of-way growth at the same time as Licensor performs its own track or right-of-way maintenance, Licensor shall perform such extended maintenance and Licensee shall reimburse Licensor for Licensor's actual costs incurred in performing such extended maintenance.

### **Section 3. LICENSEE'S PAYMENT OF EXPENSES.**

A. Licensee shall bear the entire cost and expense of the design, construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Tower and Facilities.

B. Licensee shall fully pay for all materials joined, affixed to and labor performed on Licensor's property in connection with the construction, maintenance, modification, reconstruction, repair, renewal, revision, relocation, or removal of Licensee's Tower and Facilities, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of

**EXHIBIT C**

**MEMORANDUM OF LICENSE**

**[FOLLOWS ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the parties have executed this Memorandum of License as of the day and year first above written.

**ACCEPTED BY: Licensor**  
**Union Pacific Railroad Company**

**ACCEPTED BY: Licensee**  
**CitySwitch II-A, LLC**

BY: Chris Doble

BY: Robert Raville

PRINT NAME: CHRIS D. GOBLE

PRINT NAME: Robert Raville  
President & CEO

TITLE: Assistant Vice President - Real Estate

TITLE: \_\_\_\_\_

DATE: 5/3/2022

DATE: 4/21/22



**EXHIBIT 1 TO MEMORANDUM OF LICENSE**

**DESCRIPTION OF PROPERTY AND PREMISES**

Premises is depicted as follows and shall be replaced with a surveyed legal description  
when available.

**ATTACHMENT F**  
**ALUCP SECTION**

## Policies

### 1. SCOPE OF REVIEW

#### 1. Geographic Area of Concern

The Imperial County Airport Land Use Commission's planning area encompasses:

1. *Airport Vicinity* - All lands on which the uses could be negatively affected by present or future aircraft operations at the following airports in the County and lands on which the uses could negatively affect said airports. The specific limits of the planning area for each airport are depicted on the respective *Compatibility Map* for that airport as presented in Chapter 3.
  - (a) Brawley Municipal Airport.
  - (b) Calexico International Airport.
  - (c) Calipatria Municipal Airport.
  - (d) Holtville Airport.
  - (e) Imperial County Airport.
  - (f) Salton Sea Airport.
  - (g) Naval Air Facility El Centro.

2. *Countywide Impacts on Flight Safety* - Those lands, regardless of their location in the County, on which the uses could adversely affect the safety of flight in the County. The specific uses of concern are identified in Paragraph 2.
3. *New Airports and Heliports* - The site and environs of any proposed new airport or heliport anywhere in the County. The Brawley Pioneers Memorial Hospital has a heliport area on-site.

**2. Types of Airport Impacts**

The Commission is concerned only with the potential impacts related to aircraft noise, land use safety (with respect both to people on the ground and the occupants of aircraft), airspace protection, and aircraft over-flights. Other impacts sometimes created by airports (e.g., air pollution, automobile traffic, etc.) are beyond the scope of this plan. These impacts are within the authority of other local, state, and federal agencies and are addressed within the environmental review procedures for airport development.

**3. Types of Actions Reviewed**

1. *General Plan Consistency Review* - Within 180 days of adoption of the *Airport Land Use Compatibility Plan*, the Commission shall review the general plans and specific plans of affected local jurisdictions to determine their consistency with the Commission's policies. Until such time as (1) the Commission finds that the local general plan or specific plan is consistent with the *Airport Land Use Compatibility Plan*, or (2) the local agency has overruled the Commission's determination of inconsistency, the local jurisdiction shall refer all actions, regulations, and permits (as specified in Paragraph 3) involving the airport area of influence to the Commission for review (Section 21676.5 (a)).
2. *Statutory Requirements* -As required by state law, the following types of actions shall be referred to the Airport Land Use Commission for determination of consistency with the Commission's plan *prior to their approval* by the local jurisdiction:

- (a) The adoption or approval of any amendment to a general or specific plan affecting the Commission's geographic area of concern as indicated in Paragraph 1 (Section 21676 (b)).
- (b) The adoption or approval of a zoning ordinance or building regulation which (1) affects the Commission's geographic area of concern as indicated in Paragraph 1 and (2) involves the types of airport impact concerns listed in Paragraph 2 (Section 21676 (b)).
- (c) Adoption or modification of the master plan for an existing public-use airport (Section 21676 (c)).
- (d) Any proposal for a new airport or heliport whether for public use or private use (Section 21661.5).

3. *Other Project Review* - State law empowers the Commission to review additional types of land use "actions, regulations, and permits" involving a question of airport/land use compatibility if either: (1) the Commission and the local agency agree that these types of individual projects shall be reviewed by the Commission (Section 21676.5 (b)); or (2) the Commission finds that a local agency has not revised its general plan or specific plan or overruled the Commission and the Commission requires that the individual projects be submitted for review (Section 21676.5 (a)). For the purposes of this plan, the specific types of "actions, regulations, and permits" which the Commission shall review include:

- a) Any proposed expansion of a city's sphere of influence within an airport's planning area.
- b) Any proposed residential planned unit development consisting of five or more dwelling units within an airport's planning area.
- c) Any request for variance from a local agency's height limitation ordinance.
- d) Any proposal for construction or alteration of a structure (including antennas) taller than 150 feet above the ground anywhere within the County.

- e) Any major capital improvements (e.g., water, sewer, or roads) that would promote urban development.
- f) Proposed land acquisition by a government entity (especially, acquisition of a school site).
- g) Building permit applications for projects having a valuation greater than \$500,000.
- h) Any other proposed land use action, as determined by the local planning agency, involving a question of compatibility with airport activities.

#### 4. Review Process

1. *Timing of Project Submittal* - Proposed actions listed in Paragraph 3.1 must be submitted to the Commission for review prior to approval by the local government entity. All projects shall be referred to the Commission at the earliest reasonable point in time so that the Commission's review can be duly considered by the local jurisdiction prior to formalizing its actions. At the local government's discretion, submittal of a project for Airport Land Use Commission review can be done before, after, or concurrently with review by the local planning commission or other local advisory bodies.
2. *Commission Action Choices* - When reviewing a land use project proposal, the Airport Land Use Commission has a choice of either of two actions: (1) find the project *consistent* with the *Airport Land Use Compatibility Plan*; or, (2) find the project *inconsistent* with the Plan. In making a finding of inconsistency, the Commission may note the conditions under which the project would be consistent with the Plan. The Commission cannot, however, find a project consistent with the Plan subject to the inclusion of certain conditions in the project.

Table 2A  
**Compatibility Criteria**

**Imperial County Airport Land Use Compatibility Plan**

| Zone | Location   | Impact Elements   | Maximum Densities   |                                     | Required Open Land <sup>1</sup> |
|------|--|---|---------------------|-------------------------------------|---------------------------------|
|      |  |   | Residential (dw/ac) | Other Uses (people/ac) <sup>2</sup> |                                 |
| A    | Runway Protection Zone or within Building Restriction Line | <ul style="list-style-type: none"> <li>High risk</li> <li>High noise levels</li> </ul>  | 0                   | 10                                  | All Remaining                   |
| B1   | Approach/Departure Zone and Adjacent to Runway             | <ul style="list-style-type: none"> <li>Substantial risk - aircraft commonly below 400 ft. AGL or within 1,000 ft. of runway</li> <li>Substantial noise</li> </ul> | 0.1                 | 100                                 | 30%                             |
| B2   | Extended Approach/Departure Zone                           | <ul style="list-style-type: none"> <li>Significant risk - aircraft commonly below 800 ft. AGL</li> <li>Significant noise</li> </ul>                               | 1                   | 100                                 | 30%                             |
| C    | Common Traffic Pattern                                     | <ul style="list-style-type: none"> <li>Limited risk - aircraft at or below 1,000 ft. AGL</li> <li>Frequent noise intrusion</li> </ul>                             | 6                   | 200                                 | 15%                             |
| D    | Other Airport Environs                                     | <ul style="list-style-type: none"> <li>Negligible risk</li> <li>Potential for annoyance from overflights</li> </ul>   | No Limit            | No Limit                            | No Requirement                  |

| Zone      | Additional Criteria   |  | Examples  |   |
|-----------|---|--|---|---|
|           | Prohibited Uses   | Other Development Conditions   | Normally Acceptable Uses <sup>4</sup>   | Uses Not Normally Acceptable  |
| A         | <ul style="list-style-type: none"> <li>All structures except ones with location set by aeronautical function</li> <li>Assemblages of people</li> <li>Objects exceeding FAR Part 77 height limits</li> <li>Hazards to flight<sup>5</sup></li> </ul>                                | <ul style="list-style-type: none"> <li>Dedication of aviation easement</li> </ul>  | <ul style="list-style-type: none"> <li>Aircraft tiedown apron</li> <li>Pastures, field crops, vineyards</li> <li>Automobile parking</li> </ul>  | <ul style="list-style-type: none"> <li>Heavy poles, signs, large trees, etc.</li> </ul>   |
| B1 and B2 | <ul style="list-style-type: none"> <li>Schools, day care centers, libraries</li> <li>Hospitals, nursing homes</li> <li>Highly noise-sensitive uses</li> <li>Above ground storage</li> <li>Storage of highly flammable materials</li> <li>Hazards to flight<sup>6</sup></li> </ul> | <ul style="list-style-type: none"> <li>Locate structures maximum distance from extended runway centerline</li> <li>Minimum NLR<sup>7</sup> of 25 dBA in residential and office buildings</li> <li>Dedication of aviation easement</li> </ul> | <ul style="list-style-type: none"> <li>Uses in Zone A</li> <li>Any agricultural use except ones attracting bird flocks</li> <li>Warehousing, truck terminals</li> <li>Single-story offices</li> </ul>                     | <ul style="list-style-type: none"> <li>Residential subdivisions</li> <li>Intensive retail uses</li> <li>Intensive manufacturing or food processing uses</li> <li>Multiple story offices</li> <li>Hotels and motels</li> </ul> |
| C         | <ul style="list-style-type: none"> <li>Schools</li> <li>Hospitals, nursing homes</li> <li>Hazards to flight<sup>6</sup></li> </ul>  | <ul style="list-style-type: none"> <li>Dedication of overflight easement for residential uses</li> </ul>   | <ul style="list-style-type: none"> <li>Uses in Zone B</li> <li>Parks, playgrounds</li> <li>Low-intensity retail, offices, etc.</li> <li>Low-intensity manufacturing, food processing</li> <li>Two-story motels</li> </ul> | <ul style="list-style-type: none"> <li>Large shopping malls</li> <li>Theaters, auditoriums</li> <li>Large sports stadiums</li> <li>Hi-rise office buildings</li> </ul>  |
| D         | <ul style="list-style-type: none"> <li>Hazards to flight<sup>6</sup></li> </ul>   | <ul style="list-style-type: none"> <li>Deed notice required for residential development</li> </ul>   | <ul style="list-style-type: none"> <li>All except ones hazardous to flight</li> </ul>   |   |

**Table 2A Continued  
Compatibility Criteria**

**Imperial County Airport Land Use Compatibility Plan**

**NOTES**

- 1 Residential development should not contain more than the indicated number of dwelling units per gross acre. Clustering of units is encouraged as a means of meeting the Required Open Land requirements.
- 2 The land use should not attract more than the indicated number of people per acre at any time. This figure should include all individuals who may be on the property (e.g., employees, customers/visitors, etc.). These densities are intended as general planning guidelines to aid in determining the acceptability of proposed land uses.
- 3 See Policy 2.5.
- 4 These uses typically can be designed to meet the density requirements and other development conditions listed.
- 5 These uses typically do not meet the density and other development conditions listed. They should be allowed only if a major community objective is served by their location in this zone and no feasible alternative location exists.
- 6 See Policy 3.4
- 7 NLR = Noise Level Reduction; i.e., the attenuation of sound level from outside to inside provided by the structure.

**BASIS FOR COMPATIBILITY ZONE BOUNDARIES**

The following general guidelines are used in establishing the Compatibility Zone boundaries for each civilian airport depicted in Chapter 3. Modifications to the boundaries may be made to reflect specific local conditions such as existing roads, property lines, and land uses. Boundaries for NAF El Centro are modified in recognition of the differences between civilian and military aircraft characteristics and flight tracks.

- A The boundary of this zone for each airport is defined by the runway protection zones (formerly called runway clear zones) and the airfield building restriction lines.

Runway protection zone dimensions and locations are set in accordance with Federal Aviation Administration standards for the proposed future runway location, length, width, and approach type as indicated on an approved Airport Layout Plan. If no such plan exists, the existing runway location, length, width, and approach type are used.

The building restriction line location indicated on an approved Airport Layout Plan is used where such plans exist. For airports not having an approved Airport Layout Plan, the zone boundary is set at the following distance laterally from the runway centerline:

|  |          |
|--|----------|
| Visual runway for small airplanes                  | 370 feet |
| Visual runway for large airplanes                  | 500 feet |
| Nonprecision instrument runway for large airplanes | 500 feet |
| Precision instrument runway                        | 750 feet |

These distances allow structures up to approximately 35 feet height to remain below the airspace surfaces defined by Federal Aviation Regulations Part 77.

- B1 The outer boundary of the Approach/Departure Zone is defined as the area where aircraft are commonly below 400 feet above ground level (AGL). For visual runways, this location encompasses the base leg of the traffic pattern as commonly flown. For instrument runways, the

altitudes established by approach procedures are used. Zone B1 also includes areas within 1,000 feet laterally from the runway centerline.

- B2 The Extended Approach/Departure Zone includes areas where aircraft are commonly below 800 feet AGL on straight-in approach or straight-out departure. It applies to runways with more than 500 operations per year by large aircraft (over 12,500 pounds maximum gross takeoff weight) and/or runway ends with more than 10,000 total annual takeoffs.

- C The outer boundary of the Common Traffic Pattern Zone is defined as the area where aircraft are commonly below 1,000 feet AGL (i.e., the traffic pattern and pattern entry points). This area is considered to extend 5,000 feet laterally from the runway centerline and from 5,000 to 10,000 feet longitudinally from the end of the runway primary surface. The length depends upon the runway classification (visual versus instrument) and the type and volume of aircraft accommodated. For runways having an established traffic solely on one side, the shape of the zone is modified accordingly.

- D The outer boundary of the Other Airport Environs Zone conforms with the adopted Planning Area for each airport.

sm/Impr:it.