



Imperial County Planning & Development Services Planning / Building

Jim Minnick
DIRECTOR

TO: Chairman Mike Goodsell
Vice-Chairman 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 155-foot monopole tower with a 10'0" lighting rod for a total height of 165'-0" (Conditional Use Permit #23-0009 & V #23-0003) located at 5395 E Hwy 78, Brawley (APN 039-310-019; Latitude 32° 59' 53.2068"N – Longitude 115° 4' 17.595"W) to determine Consistency with the Airport Land Use Compatibility Plan (ALUCP). [Luis Valenzuela, Planner I] (ALUC 04-23)

DATE OF REPORT: July 19, 2023

AGENDA ITEM NO: 2

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

STAFF RECOMMENDATION

It is Staff's recommendation that the Airport Land Use Commission finds the proposed 155-foot monopole tower with a 10'-0" lightning rod for a total height of 165'-0", located at 5395 E Hwy 78, Brawley, CA 92227 to be consistent with the 1996 Airport Land Use Compatibility Plan.

SECRETARY'S REPORT

Project Location:

The proposed 155' monopole tower with a 10'-10" lightning rod for a total height of 165'-0" will be located at 5395 E Hwy 78, Brawley, CA 92227. The property is identified as Assessor's Parcel Number (APN) 039-310-019-000 and is further described as POR SBE 872-13-6A-5 & -7-1 OF TR 37 & SEC 34 13-18 39.34AC Latitude 32° 59' 53.2068"N – Longitude 115° 4' 17.595"W.

Project Description:

The applicant, Cityswitch, is proposing to install a 155-foot, monopole tower with a 10'-0" lightning rod for a total height of 165'-0" to be located within a 125'-0" x 20' lease parcel in 5395 E Hwy 78, Brawley, CA 92227 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 has the commitment with Union Pacific Railroad Company 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 project requires a Conditional Use Permit (#23-0009) for the monopole tower and a Variance (#23-0003) to exceed the 100-foot height limitation for the Recreation/Open Space (S-2) zoned area by 65 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 Brawley, 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 Ben Hulse Hwy. 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 proposed monopole tower is located within vacant parcel owned by the Union Pacific Railroad Company and is not located near any County Public Airport or airstrip. The nearest airport is the Holtville Airport located approximately sixteen (16) miles west of the project site.

The project site is zoned as S-2 (Recreation/Open Space) on BLM lands per zoning map #70 of the Imperial County 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)

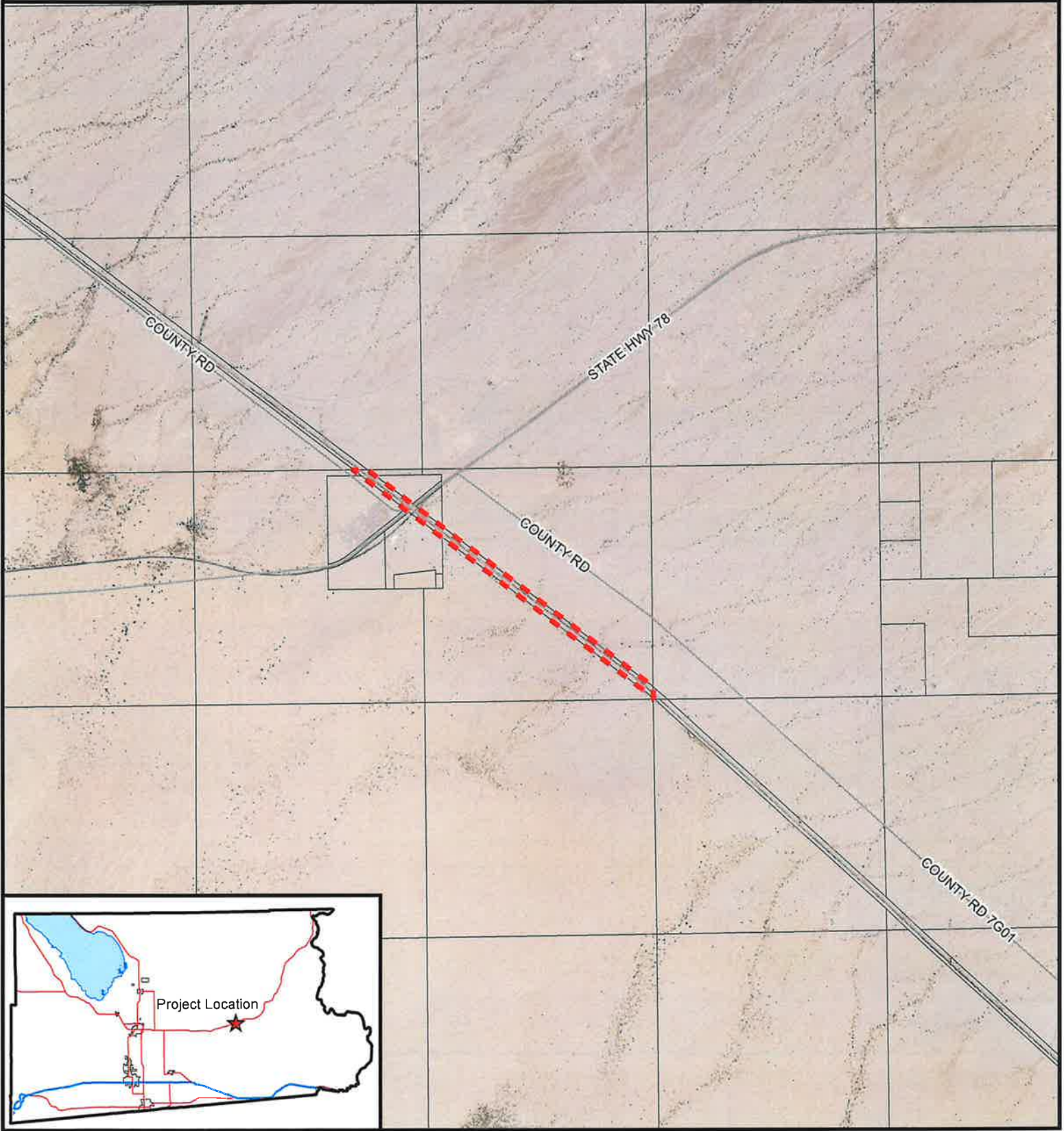
The proposed variance (V#23-0003) and conditional use permit (CUP23-0009) has been submitted for the Airport Land Use Commission's review and determination of consistency with the 1996 Airport Land Use Compatibility Plan (ALUCP) due to the nature of the application (a 165-foot wireless communication facility).

ATTACHMENTS:




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

ATTACHMENT A
VICINITY MAP

PROJECT LOCATION MAP

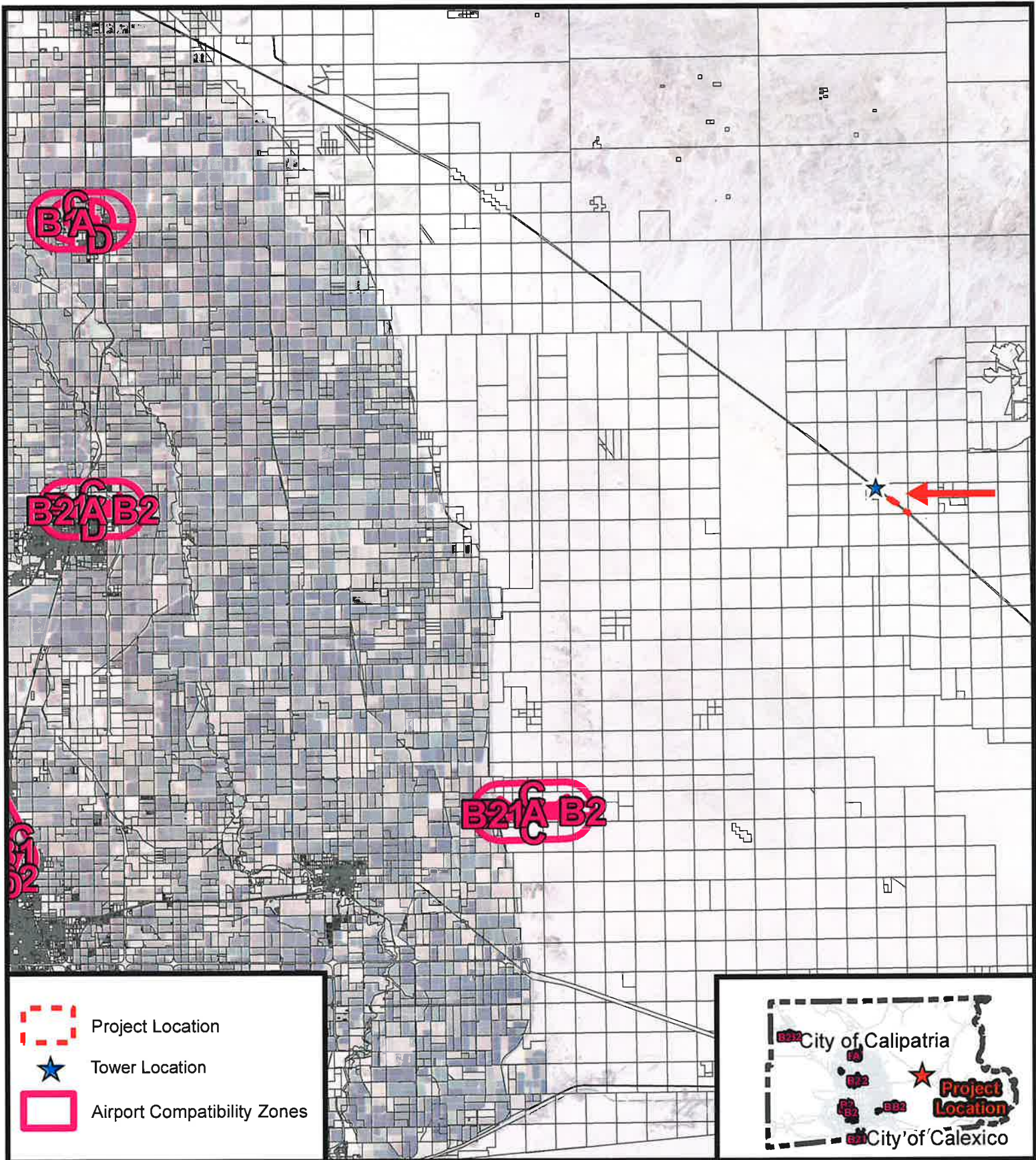


CITYSWITCH
CUP #23-0009 / IS 23-0009 / V 23-0003
APN 039-310-019-000

-  Project Location
-  Centerline
-  Parcels



ATTACHMENT B
ALUCP MAP



IMPERIAL COUNTY AIRPORT LAND USE COMMISSION

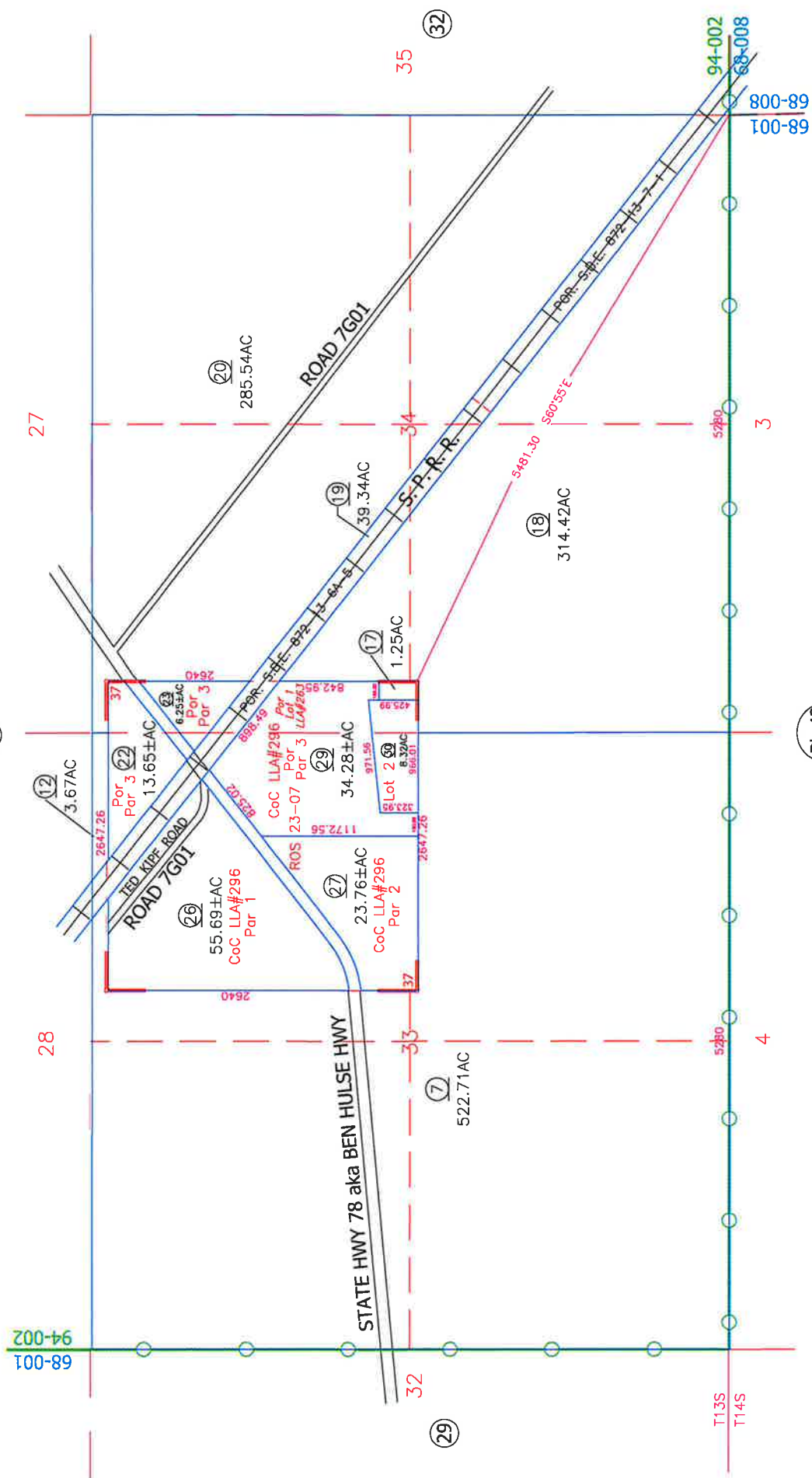
CITYSWITCH

CUP 23-0009 / IS 23-0009 / V 23-0003

APN 039-310-019-000



ATTACHMENT C
ASSESSOR PLAT MAP

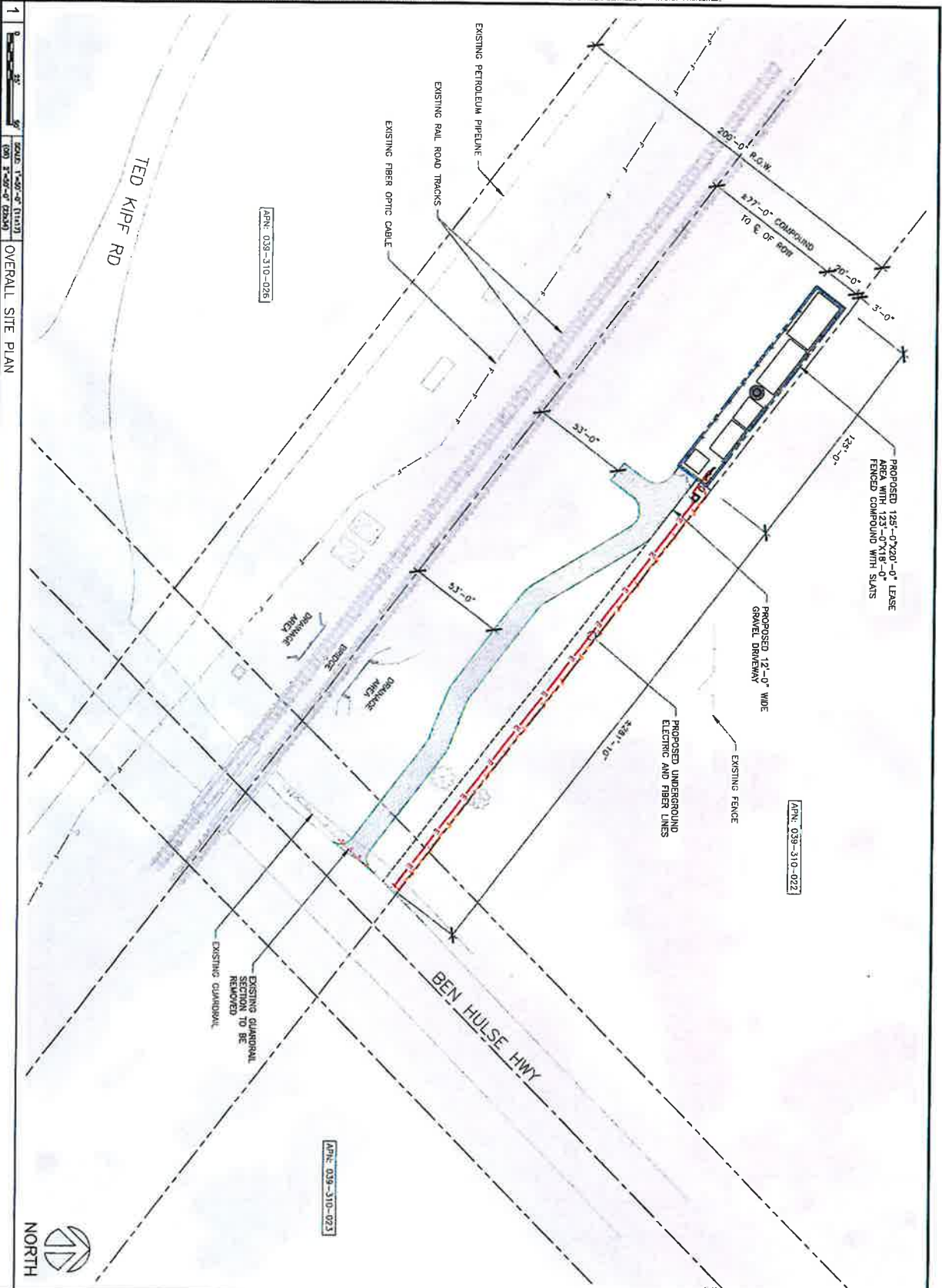


Bk.42
Pg.15

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)

- 2-10-11 MF
- 1-21-09 MF
- 5-10-73 RM
- REMAP
- From 39-33
- 8-3-71 R. M.
- 1-8-18 MF
- 10-9-17 MF
- 9-20-17 MF
- 6-22-15 MF
- 4-30-14 MF

ATTACHMENT D
SITE PLAN



1
 SCALE: 1"=50'-0" (1:1500)
 (90) 3"=50'-0" (25:1)
 OVERALL SITE PLAN



				404 FOX CLINT WASHINGTON, IL 60010 TEL: 815.377.4200 FAX: 815.377.4200 info@westchestertelecom.com	ZONING DRAWINGS NOT FOR CONSTRUCTION	DRAWN BY: _____ CHECKED BY: _____ RSM	<table border="1"> <thead> <tr> <th>REV</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>03/19/22</td> <td>ZONING DRAWINGS</td> </tr> <tr> <td>B</td> <td>03/29/22</td> <td>ZONING DRAWINGS</td> </tr> <tr> <td>C</td> <td>10/25/22</td> <td>ZONING DRAWINGS</td> </tr> </tbody> </table>	REV	DATE	DESCRIPTION	A	03/19/22	ZONING DRAWINGS	B	03/29/22	ZONING DRAWINGS	C	10/25/22	ZONING DRAWINGS	1. THESE DRAWINGS AND THESE DRAWINGS ARE PROVIDED BY ME OR UNDER MY DIRECT OR INDIRECT SUPERVISION AND I AM A DULY LICENSED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA.	SITE NAME: BEN HULSE SITE ADDRESS: TED KIPF RD BRAVLEY CA 92227 IMPERIAL COUNTY	SHEET TITLE OVERALL SITE PLAN SHEET NUMBER C-1
				REV	DATE	DESCRIPTION																
A	03/19/22	ZONING DRAWINGS																				
B	03/29/22	ZONING DRAWINGS																				
C	10/25/22	ZONING DRAWINGS																				

ATTACHMENT E
APPLICATION & SUPPORTING
DOCUMENTS



RECEIVED

APR 12 2023

IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES

Sherman & Howard LLC



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

**TED KIPF ROAD
BRAWLEY, CA 92227
APN: 039-310-022**

**CITYSWITCH SITE NAME / # – BEN HULSE CAC009
AT&T SITE NUMBER - 10066994**

Letter of Application

April 3, 2023

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

RECEIVED

APR 12 2023

**IMPERIAL COUNTY
PLANNING & DEVELOPMENT SERVICES**

RE: Proposed CitySwitch Communications Facility – Ben Hulse CAC009
AT&T Site - 10066994
Ted Kipf Road
APN 039-310-022
Brawley, CA 92227

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 155'-0" tall monopole tower with a 10'-0" lightning rod for a total height of 165'-0" to be located within a 125'-0" x 20'-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,



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 CitySwitch (Lessee)	EMAIL ADDRESS info@cityswitch.com	
2. MAILING ADDRESS (Street / P O Box, City, State) 1900 Century Place NE, Suite 320, Atlanta, GA	ZIP CODE 30345	PHONE NUMBER 404-857-0858
3. APPLICANT'S NAME Michael Bieniek, AICP / Allison R. Burke (Agents)	EMAIL ADDRESS mbieniek@lcctelecom.com / aburke@shermanhoward.com	
4. MAILING ADDRESS (Street / P O Box, City, State) 10700 W. Higgins, Ste 240, Rosemont, IL / 675 15th Ste 2300 Denver, CO	ZIP CODE 60018 / 80202	PHONE NUMBER 847-287-1156 / 303-299-8045
4. ENGINEER'S NAME Westchester Services, LLC - Glen L Hunt III	CA. LICENSE NO.	EMAIL ADDRESS ghunt@westchesterservices.com
5. MAILING ADDRESS (Street / P O Box, City, State) 3470 W. Jasper Drive, Chandler, AZ	ZIP CODE 85226	PHONE NUMBER 602-403-8614
6. ASSESSOR'S PARCEL NO. 039-310-022	SIZE OF PROPERTY (in acres or square foot) Railroad right-of-way	ZONING (existing) S-2
7. PROPERTY (site) ADDRESS Vacant railroad right-of-way off Highway 78 Ben Hulse Highway near Ted Kipf Road, Brawley, CA 92227		
8. GENERAL LOCATION (i.e. city, town, cross street) Highway 78 Ben Hulse Highway near Ted Kipf Road		
9. LEGAL DESCRIPTION <u>See attached lease agreement</u>		

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

10. DESCRIBE PROPOSED USE OF PROPERTY (list and describe in detail)	Proposed 155' monopole tower with a 10'-0" lightning rod for a total height of 165'-0" to be located within a 125'-0" x 20' 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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, HOW MANY EMPLOYEES WILL BE AT THIS SITE? 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 Print Name	4/11/23 Date
 Signature	
Allison R. Burke Print Name	4/11/23 Date
 Signature	

REQUIRED SUPPORT DOCUMENTS

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

APPLICATION RECEIVED BY:	_____	DATE	_____	REVIEW / APPROVAL BY OTHER DEPT'S required.
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.
		DATE	_____	<input type="checkbox"/> _____

CUP #
23-0009

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 CitySwitch (Lessee)	EMAIL ADDRESS info@cityswitch.com
2. MAILING ADDRESS (Street / P O Box, City, State) 1900 Century Place NE, Suite 320, Atlanta, GA	ZIP CODE 30345
3. ENGINEERS NAME Westchester Services, LLC - Glen L. Hunt III	PHONE NUMBER 404-857-0858
CA. LICENSE NO.	EMAIL ADDRESS ghunt@westchesterservices.com
4. MAILING ADDRESS (Street / P O Box, City, State) 3740 W. Jasper Drive, Chandler, AZ	ZIP CODE 85226
5. ASSESSOR'S PARCEL NO. 039-310-022	PHONE NUMBER 602-403-8614
6. PROPERTY (site) ADDRESS Vacant railroad right-of-way off Highway 78 Ben Hulse Highway, Brawley, CA 92227	ZONING (existing) S-2
7. GENERAL LOCATION (i.e. city, town, cross street) Highway 78 Ben Hulse Highway near Ted Kipf Road	SIZE OF PROPERTY (in acres or square foot) Railroad right-of-way
8. LEGAL DESCRIPTION <u>See attached lease agreement</u>	
8. DESCRIBE VARIANCE REQUESTED (i.e. side yard set-back reduction, etc.) <u>Maximum allowable height in the S-2 district for a communications tower is 100'</u>	
9. DESCRIBE REASON FOR, OR WHY VARIANCE IS NECESSARY : _____ _____	
10. DESCRIBE THE ADJACENT PROPERTY East <u>vacant parcel</u> West <u>vacant parcel</u> North <u>vacant parcel</u> South <u>vacant parcel</u>	

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
Michael Bieniek
Signature

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

REQUIRED SUPPORT DOCUMENTS

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

APPLICATION RECEIVED BY:	_____	DATE _____	REVIEW / APPROVAL BY OTHER DEPT'S required.
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.
			<input type="checkbox"/> _____

V

Site Data Sheet

Applicant: CitySwitch
1900 Century Place NE
Suite 320
Atlanta, GA 30345

Authorized Agent: Michael Bieniek, AICP
LCC Telecom Services
10700 Higgins Road
Suite 240
Rosemont, IL 60018

Allison R. Burke
Sherman & Howard, LLC
675 Fifteenth Street
Suite 2300
Denver, CO 80202

Tower Owner: CitySwitch
1900 Century Place NE
Suite 320
Atlanta, GA 30345

Applicant's Interest in the Property: Leasehold

Property Owner: Union Pacific Railroad
1400 Douglas Street
Omaha, NE 68179

Address of Property: Ted Kipf Road
Brawley, CA 92227

Parcel Number: APN: 039-310-022

Request: Application for a Conditional Use Permit, Height Variance and any other approvals or permits necessary to erect a 155'-0" monopole tower with a 10'-0" lightning rod for a total height of 165'-0" and telecommunications equipment to be located within a 125'-0" x 20'-0" ground area.



U.S. TITLE SOLUTIONS

100 Corporate Drive, Suite 305, Lebanon, NJ 08833

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

www.ustitlesolutions.com

REPORT OF TITLE
Document Research and Retrieval
U.S. Title Solutions File No. UST71004
Reference No. Winterhaven
Site Name: Winterhaven

Prepared For: LCC Telecom Services, LLC -

Premises: TBD, Winterhaven, CA 92283

Parcel: 039-310-019-000

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. UST71004 Reference No. Winterhaven

REPORT OF TITLE
SCHEDULE - I

1. **DATE OF REPORT** : April 13, 2022

2. **SCOPE OF SEARCH:** Beginning **January 01, 1908** and extending through **February 28, 2022**, a search of the land records for the jurisdiction where the property is located was conducted and we have reported what was found regarding taxes; deeds; mortgages; easements and right of ways; covenants and restrictions; judgments; liens and UCCs; and other matters commonly recorded or filed in the County records.

3. **THE ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS REPORT IS:**

Fee Simple

4. **TITLE TO SAID ESTATE OR INTEREST IN THE LAND DESCRIBED OR REFERRED TO IN THIS REPORT IS AT THE EFFECTIVE DATE HEREOF VESTED IN:**

Southern Pacific Company

5. **SOURCE OF TITLE :**

SBE Map,

Notes: No vesting record was found indexing the Grantee books or searching the BLM website for a patent. The Imperial County Assessor's Office found old SBE maps that included the vesting information for the Southern Pacific Railroad using the corresponding SBE numbers (872-13-6A-5 & 872-13-7-1). For this portion of the railroad property, it 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. See letter C.F.R. Ogilby to Guy V. Shoup dated May 14, 1926." A transcript or copy of the letter was unable to be found searching Google and the BLM website. Section 8 of the Act of Congress is known as the "Indian Appropriations Act", which declares that Indigenous people were no longer considered members of "sovereign nations" and that the US government could no longer establish treaties with them, essentially taking certain territories without option of treaty. A case of the United States v. Southern Pacific Railroad Company in 1891 states, "The act of congress of March 3, 1871, authorized the Southern Pacific Railroad Company of California...to construct a certain line of railroad, and granted it certain lands." Supporting documentation has been provided for reference.

6. **PROPERTY IS IDENTIFIED AS FOLLOWS :**

U.S. TITLE SOLUTIONS
File No. UST71004 Reference No. Winterhaven

REPORT OF TITLE
SCHEDULE - I

Parcel ID : 039-310-019-000
Tax Year : 2022
Status : Not Verified
Note : Tax Info not found online.

7. **THE LAND REFERRED TO IN THIS REPORT IS SET FORTH ON SCHEDULE - II ATTACHED HERETO**

U.S. TITLE SOLUTIONS
File No. UST71004 Reference No. Winterhaven

REPORT OF TITLE
SCHEDULE - II

(LEGAL DESCRIPTION)

No specific property description found of record. Please see Assessors Map and Property Detail Report descriptions.

Please also note: Southern Pacific Company, pertaining to railroad property, has also gone by Southern Pacific Railroad Company and Southern Pacific Transportation Company. All of these names were run from the start date in the first index book for Imperial County to present. Around 200 documents were examined, but only the provided documents applied to the subject property.

U.S. TITLE SOLUTIONS
File No. UST71004 Reference No. Winterhaven

REPORT OF TITLE
SCHEDULE - III

The items set forth herein are intended to provide you with notice of matters affecting title to the land described in Schedule - II of this Report. Any statement of facts or matters which an accurate survey of the land would disclose, rights of tenants or parties in possession under unrecorded leases and easements or claims of easements not shown by the public record are not included in this report. No liability is assumed for items not indexed or mis-indexed in the County Records.

1. MORTGAGES, DEEDS OF TRUST AND UCCs

None found within period searched.

2. JUDGMENTS AND LIENS

None found within period searched.

3. COVENANTS AND RESTRICTIONS

None found within period searched.

4. EASEMENTS AND RIGHTS OF WAY

4.1 Easement Deed by Court Order in Settlement of Landowner Action by Todd Smith, Dirk Regan and Carol Regan, Jacquelyn Sheldrick, Glenn L. Boom and William Nelson and Linda Nelson, individually and as representatives of a class of persons similarly situated, Plaintiffs to Qwest Communications Company, LLC; Sprint Communications Company L.P.; Level 3 Communications, LLC; and Wiltel Communications, LLC, **Dated** June 27, 2013, **Recorded** January 30, 2014, in Instrument No: 2014001714.

Notes: *FOR REFERENCE - Neighboring properties 039-310-026 & 028 included

4.2 Easement Deed by Court Order in Settlement of Landowner Action by Todd Smith, Dirk Regan and Carol Regan, Jacquelyn Sheldrick, Glenn L. Boom and William Nelson and Linda Nelson, individually and as representatives of a class of persons similarly situated, Plaintiffs to Qwest Communications Company, LLC; Sprint Communications Company L.P.; Level 3 Communications, LLC; and Wiltel Communications, LLC, **Dated** June 27, 2013, **Recorded** August 23, 2013, in Instrument No: 2013019494.

Notes: *FOR REFERENCE - Neighboring properties 039-310-026 & 028 included

5. OTHER RECORDED DOCUMENTS

U.S. TITLE SOLUTIONS
File No. UST71004 Reference No. Winterhaven

REPORT OF TITLE
SCHEDULE - III

5.1 Record of Survey **Recorded** December 28, 2017, in Book 23, Page 7.

Notes: Shows portion of the subject property

5.2 Certificate of Agreement of Merger between Southern Pacific Company and Southern Pacific Transportation Company, **Recorded** December 09, 1969, in Book 1286, Page 821.

6. OTHER UNRECORDED DOCUMENTS

6.1 Property Detail Report

6.2 SBE Map

Notes: No vesting record was found indexing the Grantee books or searching the BLM website for a patent. The Imperial County Assessor's Office found old SBE maps that included the vesting information for the Southern Pacific Railroad using the corresponding SBE numbers (872-13-6A-5 & 872-13-7-1). For this portion of the railroad property, it 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. See letter C.F.R. Ogilby to Guy V. Shoup dated May 14, 1926." A transcript or copy of the letter was unable to be found searching Google and the BLM website. Section 8 of the Act of Congress is known as the "Indian Appropriations Act", which declares that Indigenous people were no longer considered members of "sovereign nations" and that the US government could no longer establish treaties with them, essentially taking certain territories without option of treaty. A case of the United States v. Southern Pacific Railroad Company in 1891 states, "The act of congress of March 3, 1871, authorized the Southern Pacific Railroad Company of California...to construct a certain line of railroad, and granted it certain lands." Supporting documentation has been provided for reference.

6.3 Assessor's Map

U.S. TITLE SOLUTIONS
File No. UST71004 Reference No. Winterhaven

REPORT OF TITLE
SCHEDULE - V

(OWNERSHIP HISTORY)

1 : None found within period searched.

Property Detail Report

CA

APN: 039-310-019-000

Imperial County Data as of: 12/29/2021

Owner Information

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

Location Information

Legal Description: Per Sbe 87213-6A-5 & 7-1-OT T-37 & Sec 34 13-18 39.34Ac
APN: 039-310-019-000
Munic / Township: Alternate APN: 0393101901
Subdivision: Tmsnp-Rng-Sec:
Neighborhood: Tract #: 37
Elementary School: San Pasqual Valley, Middle School: San Pasqual Valley Unified
Latitude: 32.99305 Longitude: -115.06406

Last Transfer / Conveyance - Current Owner

Transfer / Rec Date:
Buyer Name:
Seller Name:

Price:
Seller Name:

Transfer Doc #:
Deed Type:

County: Imperial, CA
Census Tract / Block:
Legal Lot / Block:
Legal Book / Page:
High School: San Pasqual Valley,.

Last Market Sale

Sale / Rec Date:
Multi / Split Sale:
1st Mfg Amt / Type:
2nd Mfg Amt / Type:
Seller Name:
Lender:

Sale Price / Type:
Price / Sq. Ft.:
1st Mfg Rate / Type:
2nd Mfg Rate / Type:

Deed Type:
New Construction:
1st Mfg Doc #:
Sale Doc #:

Title Company:

Prior Sale Information

Sale / Rec Date:
1st Mfg Amt / Type:
Prior Lender:

Sale Price / Type:
1st Mfg Rate / Type:

Prior Deed Type:
Prior Sale Doc #:

Property Characteristics

Gross Living Area:
Living Area:
Total Adj. Area:
Above Grade:
Basement Area:
Style:
Foundation:
Quality:
Condition:

Total Rooms:
Bedrooms:
Baths (F / H):
Pool:
Fireplace:
Cooling:
Heating:
Exterior Wall:
Construction Type:

Year Built / E/I:
Stories:
Parking Type:
Garage #:
Garage Area:
Porch Type:
Patio Type:
Roof Type:
Roof Material:

Site Information

Land Use: Public School
State Use: 604 - Schools
County Use:
Site Influence: A
Flood Zone Code: Imperial County
Community Name:

Lot Area: 1,705,374 Sq. Ft.
Lot Width / Depth:
Usable Lot:
Acres: 39.15
Flood Map #:
Flood Panel #:

Zoning:
of Buildings:
Res / Comm Units:
Water / Sewer Type:
Flood Map Date: 09/26/2008
Inside SFHA: True

Tax Information

Assessed Year: 2021
Tax Year: 94-002
Tax Area:
Property Tax:
Exemption:

Assessed Value:
Land Value:
Improvement Value:
Improved %:
Delinquent Year:

Market Total Value:
Market Land Value:
Market Impov Value:
Market Imprv %:

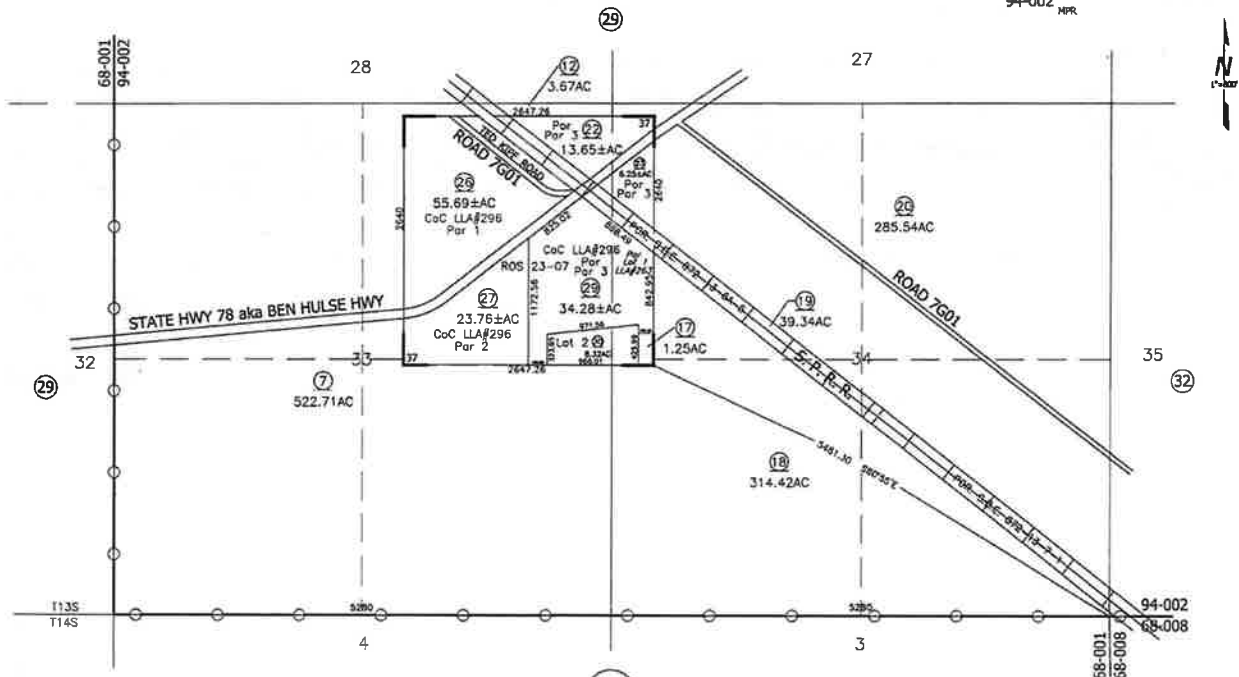


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TRACT 37 & SEC. 33 & 34 T13S, R18E

Tax Area Code
94-002
MPR

39-31



2-10-11 MF
1-21-09 MF
5-10-73 RM
REMAP
FROM 39-33
8-3-71 R. M.

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)

Bk 42
Pg 15



WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Ten (10) Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, done by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all that certain piece or parcel of land situate, lying and being in the County of Imperial, State of California, and bounded and particularly described as follows, to-wit:

A strip of land 100 feet wide across the west end of Tract 90 in Township 14 South, Range 18 East, San Bernardino Meridian, extending from the north line to the south line thereof, a distance of 8640.0 feet, more or less, and lying between the easterly boundary line of the right of way for County Road running North and South along the westerly line of said Tract 90, and a line drawn parallel to and 100 feet easterly from said easterly boundary line of the right of way for County Road, containing 6.061 acres, more or less.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD and and singular the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

Irving H. Shaw (Seal)
Virginia Shaw (Seal)
Orville H. Shaw (Seal)
Estelle Shaw (Seal)

L.R.S. \$1.00 CMB 7/24/28

State of California }
County of Imperial } ss

On this 16th day of July in the year nineteen hundred and 28, before me, Elmer Smith, a Notary Public in and for said County of Imperial, State of California, residing therein, duly commissioned and sworn, personally appeared Irving H. Shaw & Virginia Shaw, his wife, personally known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Elmer Smith Notary Public in and for the
County of Imperial, State of California.

State of California }
County of Los Angeles } ss

On this 26th day of July, A. D. 1928, before me, C. S. Champion, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Orville H. Shaw and Estelle Shaw, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

C. S. Champion Notary Public in and for
said County and State.

(NOTARIAL SEAL)

Recorded at Request of Pioneer Title Insurance Company, Aug 1 1928, at

50 min past 9 A. M., in Book 2 Page 801 of Official Records, Imperial County Records.

Shirley E. Hobay County Recorder

Fees \$1.20

By D. Cole, Deputy

ETHEL SHAW ET CON

TO

IMPER CALIFORNIA RAILWAY COMPANY

11407

THIS INSTRUMENT, Made this 9th day of July, 1923, between ETHEL SHAW and O. H. SHAW, her husband, both of Melville, Imperial County, California, parties of the first part, and IMPER-CALIFORNIA RAILWAY COMPANY, a corporation, party of the second part.

WITNESSETH:

That the said parties of the first part, for and in consideration of the sum of Ten (10) Dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the said party of the second part, and to its successors and assigns forever, all that certain piece or parcel of land situate, lying and being in the County of Imperial, State of California, and bounded and particularly described as follows: to-wit:

A strip of land 100 feet wide across Tract 74 Township 14 South, Range 16 East, San Bernardino Meridian, extending from the north line to the south line thereof, a distance of 1200.0 feet, more or less, and lying between the easterly boundary line of the right of way for County Road running north and south through the middle of said Tract 74, and a line drawn parallel to and 100 feet easterly from said easterly boundary line of the right of way for County Road, containing 2.000 acres, more or less.

TOGETHER with all and singular the tenements, hereditaments and appurtenances therewith belonging, or in anywise appertaining, and the reversion and remainder, rents and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

E. H. S. S. Canceled CM 7/24/23

Ethel Shaw (Seal)

Form Correct

O. H. Shaw (Seal)

M. W. Singer, Contract Attorney

Form Approved: 2-26-23 Wm. F. Iovrin,

Vice Pres. & Chief Counsel M.

State of California

County of Los Angeles

On this 9th day of July, A.D. 1923, before me, O. S. Champion, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared Ethel Shaw and O. H. Shaw, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me

- FIRST** That second party shall fence the east side of said premises as soon as practicable after the construction of a railroad thereon.
- SECOND** That second party shall construct suitable waste ditch with house and drop box on premises of first party immediately east of the easterly line of the premises herein conveyed; said ditch and boxes to be maintained by the first party.
- THIRD** That second party shall construct two suitable private road crossings upon said premises at grade across the railroad of second party to be used for access to and use of the lands of the first party and provided that the first party advise the second party of the location of said crossings prior to the grading of said premises by said second party.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

Fred W. Thatcher (S&A.L.)

Robert E. Thatcher (S&A.L.)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

On this 10th day of July in the year nineteen hundred and twenty-three A.D. before us Frances A. Kearney a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared Fred W. Thatcher and Robert E. Thatcher personally known to us to be the persons whose names are subscribed to the within instrument, and acknowledged to us that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

(NOTARIAL SEAL)

Frances A. Kearney, Notary Public in and for
Los Angeles County, State of California
My Commission Expires August 18, 1928.

Recorded at request of The Peoples Abstract & Title Company Sept 20, 1923 at 6
Mts Post 9 A.M. in Book 2 Page 384 of OFFICIAL RECORDS Imperial County Records.
Fees, \$1.20

Bird K. Hobby, County Recorder
By L. M. Martin, Deputy

In said County the day and year in this certificate first above written.
(NOMINAL SEAL)

Peter J. Roberts Notary Public in and for
Imperial County, State of California.

Recorded at request of THE TRUSTS ABSTRACT & TITLE COMPANY Aug 16 1928
at 1 min past 9 A.M. in Book 10, Page 187 of OFFICIAL RECORDS, Imperial County Records.
Fees \$1.00

EDD H. HONEY, County Recorder.
By M. Anderson, Deputy.

KNOW ALL MEN BY THESE PRESENTS:

THAT I, Ellen Hoover Hubbard, do hereby certify and declare that a certain
Mortgage, bearing date the 12th day of July 1928, made and executed by Myron B. Witter
and M. Nibel Witter, his wife, Mortgagees to Ellen Hoover Hubbard, Mortgagee, recorded
in the office of the County Recorder of the County of Imperial, State of California, in
Book 88 of Mortgages, at page 16 on the 12th day of September 1928; together with the
debt thereby secured, is fully paid, satisfied and discharged.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 9th day of July
1928,
Ellen Hoover Hubbard (SEAL)

R. Donald Davis
Cora B. Anderson
STATE OF MICHIGAN }
COUNTY OF CALHOUN } ss

On this 9 day of July in the year of our Lord one thousand nine hundred and
twenty three before me, R. Donald Davis a Notary Public in and for said County and
State, personally appeared Ellen Hoover Hubbard known to me to be the person whose name
subscribed to the within instrument, and acknowledged to me that she executed the same,
WITNESS my hand and official seal.

(NOMINAL SEAL) R. Donald Davis Notary Public in and for said
Calhoun County, State of Michigan.
My commission expires Aug 28/24.

Recorded at request of THE TRUSTS ABSTRACT & TITLE COMPANY Aug 16 1928 at
1 min past 9 A.M. in Book 10, Page 188 of OFFICIAL RECORDS, Imperial County Records.
Fees \$1.00

EDD H. HONEY, County Recorder.
By M. Anderson, Deputy.

ASSIGNMENT OF MORTGAGE.

(SEAL OF CHATEL)

KNOW ALL MEN BY THESE PRESENTS: That W. E. King and W. B. Hammett the parties of the
first part, for and in consideration of the sum of One Dollar in gold coin of the United
States of America to us in hand paid by G. D. Mullis, Agent, the party of the second
part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain,

railroad subject to part I of the Interstate Commerce Act and engaged in performing a service in connection with transportation by railroad and is, therefore, an "employer" within the meaning of the Railroad Retirement Act. However, since it appears that the principal part of the business of the Inter-California Railway is performed outside of the United States, only such compensation as is earned by individuals rendering service to the Inter-California Railway Company within the United States should be reported to the Board.

In view of the information already furnished by you it will be unnecessary to execute our questionnaire Form LQ-1.

Very truly yours,

Lester P. Schoene
General Counsel

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

47 JOHN V. KENNEDY
COUNTY CLERK

1969 DEC 9 AM 11:10
BOOK 1286 PAGE 821

OFFICIAL REC
INTELL COURT CLERK

State of Delaware



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 6:35 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

will consist of a 155'-0" tall monopole tower with a 10'-0" lightning rod for a total height of 165'-0" to be located within a 125'-0" x 20'-0" ground area.

After the initial construction, the facility is unstaffed and will only require service technicians, in a pick-up/van sized vehicle, to visit the site approximately once per month. Access will be provided via an easement with the proposed access entry point off 15 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 to any equipment malfunction or breach of security. Additionally, there is no impact on Imperial County's utilities such as water and sanitation, as they are not used at the site.

In accordance with FCC regulations, the mobile service facility will not interfere with any form of communications, including but not limited to, land-line phones, cable and satellite television and radio broadcasts. Wireless technology has become a vital part of emergency services, aiding local residents and motorists in a variety of situations, thus helping to protect the general public's health, safety and welfare. The proposed communications facility at this site will further enhance goals of providing the most reliable wireless coverage possible in this area.

The proposed communications facility will be designed and constructed to meet all applicable governmental and industry safety standards. Specifically, CitySwitch will comply with all FCC and FAA rules and regulations regarding construction requirements and technical standards. RF emissions are subject to the exclusive jurisdiction of the FCC, and the proposed facility will comply with the FCC's RF emission standards. Any height, lighting or marking issues are also subject to the exclusive jurisdiction of the FAA, and the proposed facility will comply with the FAA's requirements for height, lighting, and marking.

LCC Telecom Services and Sherman & Howard, on behalf of CitySwitch, look forward to working with Imperial County to bring the benefits of the proposed improved wireless services to the area. The addition of the facility will ensure improved railroad communications and the best uninterrupted wireless services for Imperial County. This application addresses all applicable standards of Sections 92404.01 and 92405.01 of the Code and satisfies the requirements of those sections.

1. All communication facilities shall be of the minimum functional height, with additional provisions for co-location, as allowed in the respective base zone unless a variance is approved concurrent with a CUP. (For example, if the number of co-locators that a particular facility is designed for is four and the required height is eighty (80) feet, then the allowed height of the facility would be one hundred ten (110) feet and if it is five co-locators, then it would be one hundred twenty (120) feet).

The proposed monopole tower is designed to be 155'-0" with a 10' lightning rod for a total height of 165'-0". The proposed height is the minimum functional height for Union Pacific and AT&T to provide the necessary coverage for the area. A height variance has been requested as part of this application. See Site Plans

2. All communication facilities constructed within three-quarters mile of a scenic corridor (as designated by the Imperial County General Plan) shall conform with the height limit in the zone in which they are located. New facilities that are co-located with an existing facility may exceed their zone's height limit, provided that the installation of the new facility does not require a height increase of the existing facility.

According to the General Plan, the area is designated as Recreation/Open Space, there is no designation of a scenic corridor in the vicinity. Therefore, this section does not apply.

3. Outside of the three-quarter-mile range of a designated scenic corridor, communication facility, except an exempt facility, may exceed one hundred twenty (120) feet. A bonus of twenty (20) additional feet per facility, up to a maximum height of three hundred (300) feet, is permissible for operators co-locating on a single facility.

The proposed tower height is 155'-0" and a height variance has been requested as part of this application.

4. No roof-mounted wireless communication facility, except an exempt facility, may be more than twelve (12) feet taller than the roof of the building on which it is mounted, unless facility is fully screened and height does not exceed height permitted by applicable zoning code.

The application is for a new communications tower facility and not a rooftop facility. Therefore, this section does not apply.

facility meets this standard is required. A copy of the certification from the FCC shall be submitted to the county.

All spectrum used by both railroad users and wireless providers are solely regulated by the FCC which includes the power densities, therefore, no signals will exceed the current FCC adopted standards for human exposure.

- H. Cabling. For structure-mounted antennas, all visible cabling between equipment and antennas shall be routed within the building wherever feasible, or on the roof below the parapet wall. Cabling on the exterior of a building or monopole shall be located within cable trays painted to match. All cabling shall be performed in accordance with the NEC (National Electrical Code).

All cabling is proposed for the interior of the monopole and will be in accordance with the NEC guidelines. In the event that any future cabling needs to be on the exterior of the tower, a cable tray painted to match the tower will be used.

- I. Painting and Lighting. All facilities shall be painted or constructed of materials to minimize visual impact. All towers shall be painted in a non-reflective and preferably earth tone color. All towers shall be lit with approved lighting as required by the FAA and the Airport Land Use Commissions Standards.

The proposed tower is going to be galvanized metal which is a non-reflective material. The proposed tower is going to be 155'-0" with a 10'-0" lightning rod for a total height of 165'-0" which is below the 200' threshold requiring lighting per the FAA. Therefore, no lighting will be provided.

- J. Noise. All communication facilities shall be designed to minimize noise. If a facility is located in or within one hundred (100) feet of a residential zone, noise attenuation measures shall be included to reduce noise levels to a maximum exterior noise level of fifty (50) L dn at the facility site's property lines.

The proposed wireless communications facility does not generate significant noise. The proposed facility will not initially have a back-up generator, therefore there will be no noise generated at the site. There are no residential zone parcels within one hundred (100) feet of the proposed facility. Therefore, no noise attenuation measures will be necessary.

- K. Accessory Structures. Enclosures and cabinets housing equipment related to a wireless communication facility shall meet setback and height restrictions for such structures in 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 wireless communications facility is an accessory use on the property to the principal use of the railroad. As stated above, this will not preclude the installation of antennas on within the right-of-way.

- P. Lot Size. For purposes of determining whether the installation of a facility complies with county development regulations, including, but not limited to, setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on lease parcels within such lot. This shall also take into consideration the height of the tower in the event of a failure whereby it could fall thereby crossing property lines.

The proposed tower is going to be located within the railroad right-of-way, therefore the development regulations do not strictly apply to this facility because there is no actual lot size. The proposed tower will be designed to collapse onto itself in the unlikely event of a failure. The surrounding area is desert, so even an unlikely failure will not have an impact.

- Q. Inventory of Existing Sites. Each applicant for a facility shall provide to the planning director an inventory of its existing towers, antennas, or sites approved for facilities, that are either within the jurisdiction of Imperial County or within one mile of the border thereof, including specific information about the location, height and design of each facility. The planning director may share such information with other applicants applying for administrative approvals or special use permits under this ordinance or other organizations seeking to locate facilities within the jurisdiction of Imperial County, provided, however that the planning director is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

See attached Coverage Plots.

- R. Aesthetics. Towers and antennas shall meet the following requirements:

- a. Towers shall either maintain a galvanized steel finish, or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obstructiveness.

The proposed tower will maintain a galvanized steel finish so as to reduce visual obstructiveness.

- 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.

CitySwitch will be compliant with all Electronic Industries Association along with any local, state, or federal guidelines relating to the construction and maintenance of the communications facility.

- V. Measurement. For purposes of measurement, tower setbacks and separation distances shall be calculated and applied to facilities located in the unincorporated areas of the county of Imperial according to the provisions of Title 9 for the respective base zone.

Noted, the setbacks are shown on the drawings and the separation distance has been calculated based on the coordinates of the existing tower and the coordinates for the SBA tower shown on the FCC ASR Search website.

- W. Not Essential Services. Towers and antennas shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as essential services, public utilities or private utilities.

CitySwitch, Union Pacific, and AT&T Mobility are private corporations and are not essential service providers.

- X. Franchises. Owners and/or operators of towers or antennas shall certify that all franchises required by law for the construction and/or operation of a communication system in Imperial County have been obtained and shall file a copy of all required franchises with the planning director.

Any required certifications of franchise will be filed with Imperial County as required.

- Y. Public Notice. For purposes of this ordinance, any conditional use permit request, variance request, or appeal of an administratively approved CUP or special use permit shall require public notice to all abutting property owners and all property owners of properties that are located within the corresponding separation distance listed for a CUP or variance in the respective base zone, under Title 9, in addition to any notice otherwise required by the planning director.

CitySwitch will comply with any notice obligations for the CUP process, to the extent the public notice is not required by Imperial County.

- 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.

Compliance with Section 92405.01 – Wireless Communications Permitting Requirements

All communication facilities not specifically exempted from these regulations are subject to one of the two permit processes described below. Both processes include a conditional use permit and may have a concurrent variance. Applications for all permits required pursuant to this division shall be made in writing on a form prescribed by the planning director, and shall be accompanied by plans and data to assure the fullest practical presentation of facts for the permanent record. Such application shall be accompanied by a fee or fees as may be set by the board of supervisors. No part of such fee shall be refundable.

- A. Conditional Use Permit before the planning director. Certain communication facilities may be conditionally approved by the planning director, as described in this subsection.
1. Qualifying Facilities. The following types of communication facilities qualify for a use permit before the planning director:
 - a. Receive-only radio and television antennas and satellite dishes or antennas that do not qualify for exemption under Section 92401.3, including multiple antennas or dishes on a single parcel.
 - b. Amateur radio facilities that do not qualify for exemption under Section 92401.3. When required, a conditional use permit before the planning director shall be granted to amateur radio operators with no fee.
 - c. Communication facilities installed on publicly owned property, regardless of zone, provided they comply with the general requirements in Section 92401.04 and hold an executed license or lease agreement.
 - d. Co-located communication facilities, regardless of zone, provided they comply with the general requirements in Section 92401.04.

The proposed wireless communications is located within the Union Pacific right-of-way and does not qualify for a CUP before the Planning Director.

2. Required Findings. In order for the planning director to approve a proposed communication facility under a conditional use permit, the planning director shall make the findings required for a conditional use permit, as well as, the following additional findings:
 - a. The facility complies with all applicable Section 92401.04.

The application includes all items required in Section 92401.04 and complies with all requirements in said section.

- a. Locating a tower, antenna or facility, including the placement of additional buildings or other supporting equipment used in connection with said tower or antenna, in any industrial or heavy commercial zone or a grouped facility.
- b. Locating antennas or existing structures or towers consistent with the terms of subsections (1) and (2) below.
 - (1) Antennas on existing structures. Any antenna, which is not attached to a tower, may be approved by the planning director as an accessory use to any commercial, industrial, professional, institutional, or multi-family structure of eight or more dwelling units, provided:
 - (a) The antenna does not extend more than thirty (30) feet above the highest point of the structure;
 - (b) The antenna complies with all applicable FCC and FAA regulations;
 - (c) The antenna complies with all applicable building codes.
 - (2) Antennas on existing towers. An antenna which is attached to an existing tower may be approved by the planning director and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collocation is accomplished in a manner consistent with the following:
 - (a) A tower which is modified or reconstructed to accommodate to collocation of an additional antenna shall be of the same tower type as the existing tower, unless the planning director allows reconstruction as a monopole.
 - (b) Height.
 - (i) An existing tower may be modified or rebuilt to a taller height, not to exceed thirty (30) feet over the tower's existing height, to accommodate the collocation of an additional antenna.
 - (ii) The height change referred to in subsection (b)(i) may only occur one time per communication tower.
 - (iii) The additional height referred to in subsection (c)(i) shall not require an additional distance separation. The tower's premodification height shall be used to calculate such distance separation.
 - (c) On-site location.
 - (i) A tower which is being rebuilt to accommodate the collocation of an additional antenna may be moved onsite within fifty (50) feet of its existing location.
 - (ii) After the tower is rebuilt to accommodate collocation, only one tower may remain on the site.
 - (iii) A relocation onsite tower shall continue to be measured from the original tower location for purposes of calculating separation distances between towers pursuant to the base zone.
 - (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.

AT&T Mobility is currently located on the existing SBA tower which is approximately 0.30 miles southeast of the proposed location. At the current lease rate, AT&T is burdened by the high rent, as stated in the attached Sworn Statement of Spencer Gambrell in Support of New Tower Construction from AT&T Mobility Services LLC. Should SBA be allowed to continue charging above market rates, AT&T will not be able to upgrade its equipment and stay competitive in the market.

- b. 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 exposure 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 visual impacts.

As stated above, the proposed facility is located within the Union Pacific railroad right-of-way and is located in the desert. The proposed facility will not have a significant visual impact on the surrounding area.

- 4. Conditional Use Permit Process. Applications for conditional use permits under this subsection shall conform to the requirements of Section 92401.04 and shall be subject to the procedures and requirements of Title 9 relating to the granting of conditional use permits.

The proposed application is in conformity with Section 92401.04 and Title 9 relating to the granting of the Conditional Use Permit.

- 5. Conditions. In granting a conditional use permit, the planning commission may impose conditions to the extent the planning commission concludes such conditions are necessary to minimize any adverse effects if the proposed facilities on adjoining properties.

CitySwitch is aware that the Planning Commission may impose conditions on the Conditional Use Permit to minimize adverse effects on the adjoining properties. 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.

Conditional Use Permit Standards

90203.09 Action on a conditional use permit.

An application for a conditional use permit shall be reviewed, and approved, conditionally approved, or denied by the decision-making authority.

The authority may approve or conditionally approve an application only if it finds all of the following:

- A. The proposed use is consistent with the goals and policies of the adopted county general plan;

Legislative Mandate

For the reasons stated above, the California legislature has established the General Plan as the comprehensive statement of public policy by which to evaluate all decisions regarding the development of land, the extension of public infrastructure, and the conservation and wise use of natural resources.

Although wireless telecommunications is not technically the extension of public infrastructure, it does serve the general public as a service that is essential to the fabric of Imperial County. Wireless technology has become as important to society as all other forms of public infrastructure such as roads, water, electricity and others.

County Population

The West Shores communities of Salton City, Salton Sea Beach, and Desert Shores are also largely retirement and recreation communities, though increasingly their populations are becoming more diversified. These communities experience a noticeable increase in population during the winter months when visitors converge to the area to avoid cold, wet winters in other parts of the United States and Canada.

The comprehensive plan acknowledges the influx of “snow-birds” in the winter months causing a noticeable increase in the population. A robust wireless infrastructure is essential to the common good of the population of Imperial County because with the seasonal change in population, a strong wireless network is critical.

Public Safety

Additional public safety is provided by the County Fire Department/Office of Emergency Services in cooperation with the incorporated cities and volunteer units in the unincorporated communities. The County Fire Department's main facility is located at the County Airport in Imperial.

or private, or in any way endanger the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors. Wireless telephones provide an alternate communication system which has repeatedly proven its effectiveness in emergency situations and is commonly being used by police and fire departments to protect the general public's health, safety, and welfare. All wireless telecommunications facilities are governed by FCC and FAA regulations. As such, all spectrum used to provide a wireless signal are allocated by the FCC which has deemed the signals will not cause any health-related affects.

- F. The proposed use does not violate any other law or ordinance;

The application on behalf of CitySwitch, Union Pacific and AT&T conforms to the applicable regulations of the S-2 zone and the facility is allowable as a conditional use in that zone. The proposed wireless telecommunications facility is also designed to conform to all federal, state and local regulations.

- G. The proposed use is not granting a special privilege.

No special privilege will be granted to CitySwitch, Union Pacific or AT&T by granting the Conditional Use Permit. AT&T is currently located on an existing tower owned by SBA Structures, LLC approximately 0.30 miles southeast of the proposed location. At the current lease rate, AT&T is burdened by the high rent, as stated in the attached Sworn Statement of Spencer Gambrell in Support of New Tower Construction from AT&T Mobility Services LLC. Should SBA be allowed to continue charging above market rates, AT&T will not be able to upgrade its equipment and stay competitive in the market.

4. That the granting of such variance will not adversely affect the comprehensive general plan.

The granting of such variance will not adversely affect the comprehensive general plan. As previously stated:

Legislative Mandate

For the reasons stated above, the California legislature has established the General Plan as the comprehensive statement of public policy by which to evaluate all decisions regarding the development of land, the extension of public infrastructure, and the conservation and wise use of natural resources.

Although wireless telecommunications is not technically the extension of public infrastructure, it does serve the general public as a service that is essential to the fabric of Imperial County. Wireless technology has become as important to society as all other forms of public infrastructure such as roads, water, electricity and others.

County Population

The West Shores communities of Salton City, Salton Sea Beach, and Desert Shores are also largely retirement and recreation communities, though increasingly their populations are becoming more diversified. These communities experience a noticeable increase in population during the winter months when visitors converge to the area to avoid cold, wet winters in other parts of the United States and Canada.

The comprehensive plan acknowledges the influx of “snow-birds” in the winter months causing a noticeable increase in the population. A robust wireless infrastructure is essential to the common good of the population of Imperial County because with the seasonal change in population, a strong wireless network is critical.

Public Safety

Additional public safety is provided by the County Fire Department/Office of Emergency Services in cooperation with the incorporated cities and volunteer units in the unincorporated communities. The County Fire Department's main facility is located at the County Airport in Imperial.

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.

Alternatives Analysis

For a facility requiring a conditional use permit before the planning commission, an alternatives analysis shall be prepared by or on behalf of the operator, as described below.

- A. **Alternatives to be Considered.** The alternatives analysis shall consider alternative locations and designs for the proposed facility, including those which would not require a conditional use permit. At a minimum, alternatives included in the analysis shall include: (1) co-location at all existing communication facilities whether in the unincorporated area of the county, a city or an adjacent county; (2) lower, more closely spaced communication facilities; and (3) mounting on any existing nonresidential structure within one-half mile of the proposed facility in the unincorporated area of Imperial County. The alternatives analyzed shall be approved by the planning director. For facilities to be located near an incorporated city, the analysis shall also explain why siting within the city is not possible.

Union Pacific and AT&T have considered co-location on existing facilities and deemed that no other tower in the area is appropriate for the following reasons.

(1) As stated in previous narrative, AT&T is currently on an SBA Structures, LLC tower approximately 0.30 miles southeast of the proposed CitySwitch facility. AT&T has deemed this tower to be economically burdensome as shown in the attached Sworn Statement of Spencer Gambrell in Support of New Tower Construction from AT&T Mobility Services LLC. In addition, Union Pacific requires direct access to their equipment along the railroad line and the ability to upgrade as needed which would be much more difficult locating on the SBA tower.

(2) Providing lower towers more closely spaced out would not benefit AT&T, Union Pacific or the County. When evaluating a network, carriers such as AT&T require specific height and locations based on the existing network. Lowering the height and building more towers would create a degradation of the signal in the area. Doing this would create coverage gaps in some areas and a bleed over into other cell sites.

(3) AT&T is currently on an SBA Structures, LLC tower approximately 0.30 miles southeast of the proposed CitySwitch facility. The proposed tower is in a non-residential area, near the intersection of Highway 78 – Ben Hulse Highway and Ted Kipf Road. The nearest incorporated city is Holtville, California which is approximately 21 miles west of the proposed tower which would not be a possible alternative. As stated above, due to the economic burden on AT&T it is no longer desirable to co-locate on this tower.

**Sworn Statement of Spencer Gambrell in
Support of New Tower Construction from
AT&T Mobility Services LLC**

Facilities onto the **CitySwitch** Tower as the **SBA** Tower has become a high-cost antenna site structure for AT&T.

5. This sworn statement is made to attest that having its Wireless Facilities remain on the **SBA** Tower, which is the only existing communications support structure in AT&T's search ring, is economically burdensome for AT&T and would not result in the same cost-effective operation as compared to what AT&T could achieve if it relocated its Wireless Facilities to the **CitySwitch** Tower and, thus, would materially inhibit AT&T from improving and maintaining wireless services.

Co-Location on the SBA Tower is Economically Burdensome.

6. AT&T maintains a co-location agreement with **SBA** for the **SBA** Tower. Under this agreement, **SBA** increases the rent, assesses other costs and poses other logistical issues when AT&T installs additional Wireless Facilities on the **SBA** Tower. AT&T anticipates future rent increases and costs from **SBA** if it remains co-located at the **SBA** Tower. Those rent increases and costs would result from, among other things, AT&T's equipment rights on the **SBA** Tower.

7. The current rent charged by **SBA** to co-locate on the **SBA** Tower is over **[Five]** times what **CitySwitch** will charge AT&T to co-locate on the **CitySwitch** Tower. Pursuant to the agreement between AT&T and **CitySwitch**, annual rent increases are less than the annual rent increases charged by **SBA**. At the current rate of rent increases, over the next twenty (20) years, the difference in rent paid by AT&T to remain on the **SBA** Tower versus relocating on the **CitySwitch** Tower is well over **[Six]** million dollars.

8. Since AT&T located on the **SBA** Tower in **[3/3/2005]**, rent and escalators have become more competitive in the tower marketplace. New tower companies have entered the marketplace since **[3/3/2005]**, which has also led to more competitive economic terms in tower lease agreements. Considering these competitive economic terms from other tower companies, AT&T has requested tower rent reductions from **SBA**. Unlike other tower companies, **SBA** has resisted an economically sustainable cost structure with its existing AT&T co-location leases, such that many of these leases have become economically burdensome for AT&T.

AT&T's lease agreement for the **SBA** Tower does not include "set aside" capacity reserved for the future needs of AT&T's Wireless Facilities. Every time AT&T desires to improve the Wireless Facilities installed on the **SBA** Tower, it must apply to **SBA** which then triggers an application fee and a lengthy administrative review process, which typically includes a structural analysis of the tower and an amendment to the existing lease agreement. This administrative process may take several months and results in unnecessary time delay and additional costs in the deployment of the upgraded Wireless Facilities.

16. Conversely, AT&T's master tower lease agreement with **CitySwitch** allows AT&T to rent 30,000 square inches of tower space and loading on a **CitySwitch** Tower. This space and loading capacity is reserved exclusively for AT&T and will accommodate the needs for AT&T's Wireless Facilities well into the future. This arrangement benefits AT&T because it increases the speed of deploying Wireless Facilities and gives AT&T greater flexibility to upgrade technologies and respond to the ever-changing coverage and capacity demands of its wireless network and does not materially inhibit AT&T from improving and maintaining its wireless services. Provided it does not exceed the reserved space and capacity limits in the co-location agreement, AT&T is free to upgrade its Wireless Facilities on the **CitySwitch** Tower with little to no delay.

Spencer Gambrell



Subscribed and sworn to before me
this 28 day of February, 2023.



Notary Public State of Arkansas
My Commission Expires



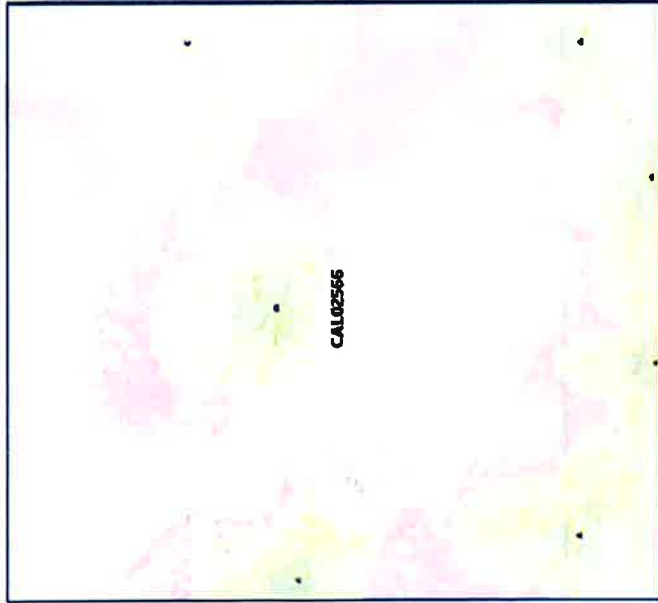
Ben Hill
EA #15297867

Carrier Coverage Plots

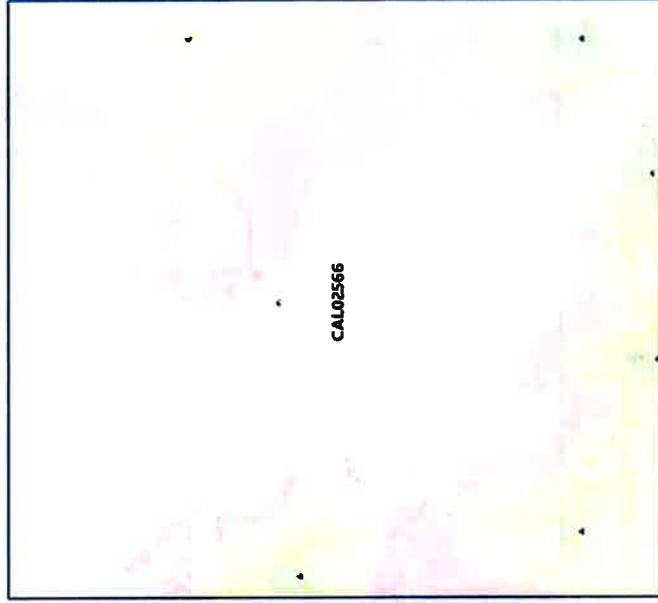
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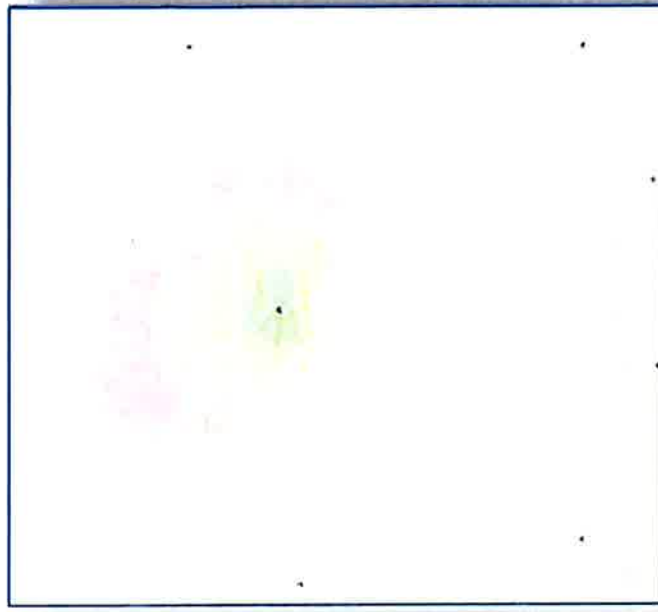
Existing coverage with existing site location



Coverage without site



Existing location coverage only



FAA Determination Letter

SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective 21 Nov 2007, will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA. This determination includes all previously filed frequencies and power for this structure.

If construction or alteration is dismantled or destroyed, you must submit notice to the FAA within 5 days after the construction or alteration is dismantled or destroyed.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission (FCC) because the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (847) 294-7575, or vivian.vilaro@faa.gov. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2022-AWP-12867-OE.

Signature Control No: 539124036-551428703

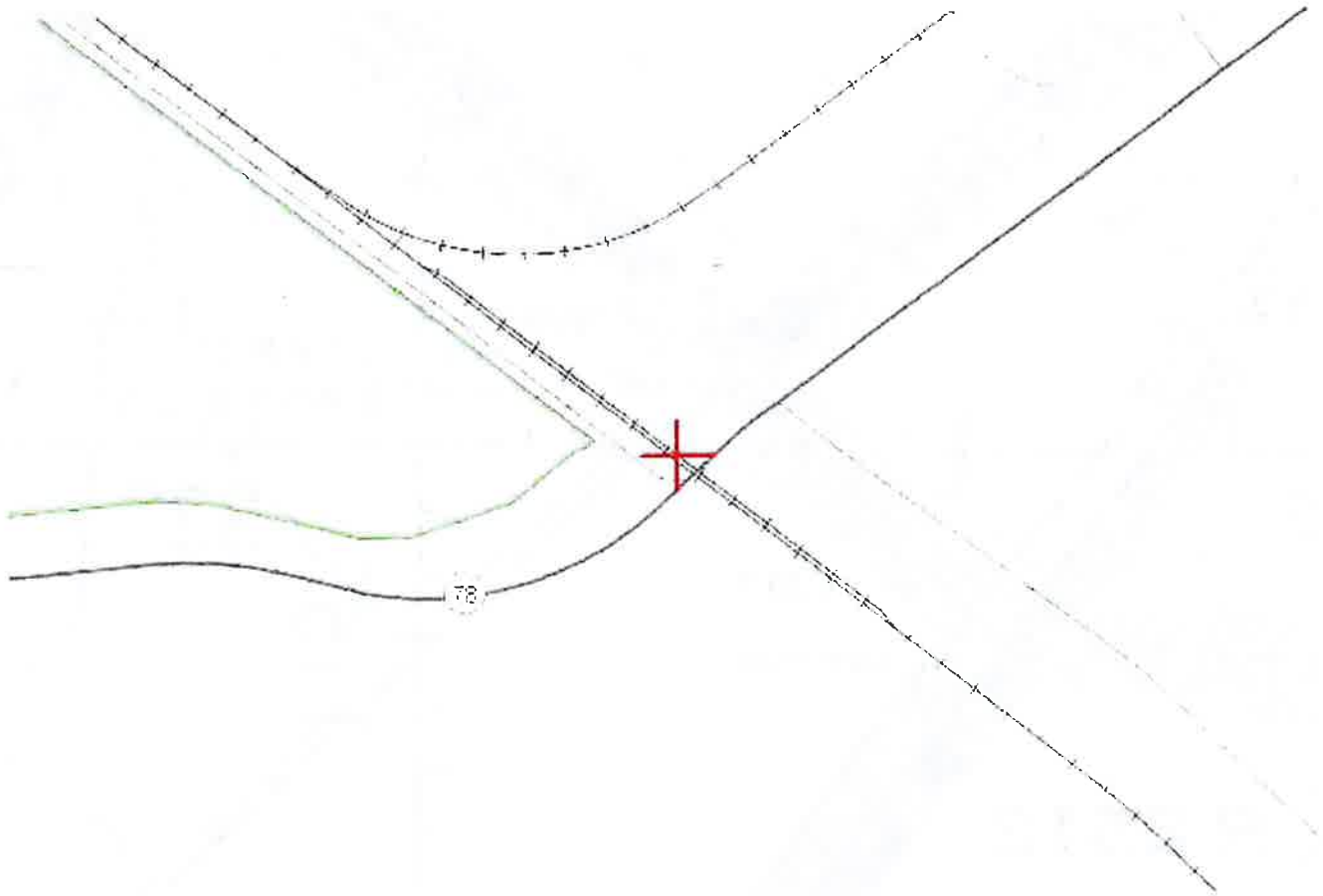
(DNE)

Vivian Vilaro
Specialist

Attachment(s)
Frequency Data
Map(s)

cc: FCC

TOPO Map for ASN 2022-AWP-12867-OE



Fall Zone Certification

Site Plan

Lease

Licensor grants to Licensee the right to locate on the Premises, in an area close to the base of the Tower, one (1) concrete slab measuring sixteen (16') feet by twenty-two (22') feet] that will be used to mount the Tower and Facilities installed on the Premises by Licensee. The Facilities will be located within the area further defined on Exhibit "A" of this Agreement. Licensee may install, as part of the Facilities on the Premises all other related equipment, cables, accessories and improvements and any other items necessary to the successful and secure use of the Premises, subject to the other terms and conditions in this Agreement.

4. PLANS:

Licensee shall submit detailed site plans and technical specifications for the construction of the Tower and Facilities at the Premises to Licensor for Licensor's approval prior to the commencement of construction thereof. Licensor shall not unreasonably withhold, condition or delay such approval. The approved site plans shall be made a part of this Agreement and be attached to the Agreement as Exhibit "A". In the event any modifications to the Tower or Facilities, or any other improvements or installations on the Premises, are desired by Licensee or any approved sublicensees of Licensee, then the plans and technical specifications for such modifications, improvements or installations shall also be subject to Licensor's approval prior to commencement of construction thereof.

5. PERMIT:

Licensee shall have the obligation to apply to the municipality or any other state or federal authority, as may be required, for a permit to construct the Tower and Facilities at any time during the term of this Agreement. Licensee shall prepare, at its sole cost and expense, all site plans (i.e., engineering and architectural documents) which are required pursuant to its application for the foregoing permit.

Licensor agrees to reasonably cooperate with Licensee in its efforts to obtain any necessary permits from the municipality or any other state or federal agency, as the case may be. Licensor further agrees not to unreasonably withhold consent to any such application for and during the term of this Agreement, and further agrees to execute all necessary application forms that may be reasonably required. Licensor shall further appear for testimony before any municipal, state or federal board in the event same is required for approval. Any application so filed, however, shall be at the full cost and expense of Licensee, said cost and expense including, but not being limited to engineering fees, application fees, legal fees and such other costs as may be incidental to the pursuance of any such application.

Licensee shall be responsible for ensuring that all equipment installed by Licensee complies with the applicable rules and regulations of the Federal Communications Commission (hereinafter, the "FCC") and the electrical code and other applicable codes of any other governmental authority having jurisdiction over the Premises or such equipment prior to the installation thereof.

6. COST OF PERMITS:

Licensee shall be responsible for payment of expenses for any and all necessary and/or required municipal permits to construct the Tower and Facilities on the Premises. Licensor agrees that it shall not unreasonably withhold or delay its consent of any such application or permit which may be required. Licensee shall pay any and all fees associated with the approval and/or construction of the Tower and Facilities. Licensor

In the event Licensee elects to relocate its Tower and Facilities to the alternative location, the parties shall execute new copies of approved Exhibit "A" as necessary, to reflect such change in the location of Licensee's Tower and Facilities at the Premises.

10. PROTECTION OF FIBER OPTIC CABLE:

Licensee represents and warrants that all work on the Premises performed by Licensee, its contractors, agents and/or employees will be in strict compliance with the provisions set forth in "PROTECTION OF SUBSURFACE FACILITIES ON LICENSOR'S PROPERTY" of the General Terms and Conditions.

In addition to the liability terms contained elsewhere within this Agreement, Licensee shall indemnify and hold Licensor harmless against and from all costs, liability and expense whatsoever (including, without limitation, attorneys' fees and court costs and expenses), arising out of or in any way contributed to by any act or omission of Licensee, its contractors, agents and/or employees, that cause or in any way contribute to (a) any damage to or destruction of any fiber optic cable telecommunications system located on the Premises by Licensee, its contractors, agents and/or employees, (b) any injury to or death of any person employed by or on behalf of any fiber optic cable telecommunications company and/or its contractors, agents and/or employees on the Premises, and/or (c) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunications company or companies.

11. TERMINATION:

In the event that any municipal, state, federal or any other governmental authority prevents Licensee from occupying or operating Licensee's equipment at the Premises, or if in Licensee's reasonably exercised judgment, significant engineering, economic or other developments occur that prevent the economic feasibility of this Agreement, Licensee has the right to terminate this Agreement, upon providing Licensor with six (6) months prior notice and removing Licensee's equipment and restoring the Premises to its original conditions, except for reasonable wear and tear, and removing any underground structures to a depth that is mutually agreeable to the Parties.

The Licensee agrees that upon the expiration or termination of this Agreement or the abandonment of the Premises by the Licensee, the Licensee shall (a) remove from the Premises, at the expense of the Licensee, all structures, property and other materials not belonging to the Licensor; and (b) restore the surface of the ground to as good a condition as the same was in before such structures were erected and/or constructed, including, without limiting the generality of the foregoing the removal of foundations of such structures, the filling in of all excavations and pits, and the removal of all debris and rubbish, all of which shall be performed at the Licensee's expense. If the Licensee should fail to perform such removal, the Licensor may perform the work and the Licensee shall reimburse the Licensor for the cost thereof, within thirty (30) days after the bill is rendered. The Licensee's non-use of the Premises for the purposes described in this Agreement continuing for one (1) year shall be sufficient and conclusive evidence of such abandonment, unless the Licensee shall have notified the Licensor in writing of its reasons for such non-use, and shall continue to pay rent as and when due to the Licensor.

12. OWNERSHIP OF TOWER, FACILITIES AND RADIO EQUIPMENT:

16. TERM:

This Agreement shall be for an initial term of ten (10) years, commencing on the date that Licensee starts construction ("Commencement Date"). The License shall automatically renew for three (3) additional term of five (5) years unless terminated under terms herein.

17. INTERFERENCE:

Licensor grants to Licensee the use of the Premises exclusively for the construction and use of the Tower and Facilities for the installation of radio communications equipment. The equipment installed by Licensee or its sublicensees shall transmit only on frequencies licensed for such equipment. Licensee shall be responsible for performing all radiofrequency ("RF") engineering studies to ensure that the placement of radio equipment at the Premises will not cause interference to existing equipment located near the Premises by Licensor or Licensor's Licensees, lessees or vendors, and Licensee shall submit such studies to Licensor for approval prior to installation.

If any radio equipment installed by Licensee causes RF interference with such existing equipment of Licensor or Licensor's Licensees, lessees or vendors, Licensee shall be responsible for eliminating or minimizing to an acceptable degree such RF interference within 48 hours after receipt after written notice of such interference from Licensor to Licensee by, for example, removing, replacing or repositioning the equipment causing such interference (hereinafter, the "Interfering Equipment"). In the event such interference is not eliminated or minimized to an acceptable degree within the aforesaid 48 hour period, Licensee or its client, as the case may be, shall discontinue use of the Interfering Equipment (except for intermittent operation for the purpose of correcting such interference). If said interference is not corrected within thirty (30) days after Licensee's receipt of the aforesaid notice from Licensor, Licensee shall remove the Interfering Equipment within an additional ten (10) day period.

18. INSURANCE:

Licensee and/or its contractors shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- (a) General Liability insurance providing bodily injury including death, personal injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. This insurance shall contain broad form contractual liability. Exclusions for explosion, collapse and underground hazard shall be removed. Coverage purchased on a claims made form shall provide for at least a two (2) year extended reporting or discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b) there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.
- (b) Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the general public liability insurance.

claims that are due to or caused solely by the negligence or intentional misconduct of Licensor, its affiliates, or the officers, agents, assigns, contractors and employees.

20. ASSIGNMENT:

The Licensee shall not assign this Agreement, or any interest therein, without the written consent of Licensor. Such consent shall not be unreasonably withheld, conditioned, or delayed. No assignment by Licensee shall relieve Licensee of any of its obligations and liabilities assumed hereunder.

Notwithstanding the foregoing, Licensor agrees that Licensee shall have the right to freely assign its rights and obligations hereunder to any parent company, a wholly-owned subsidiary or affiliate of Licensee, an entity in the business of developing or operating telecommunication towers (excluding FCC licensed wireless carriers and existing Tower sublessees) or a purchaser of all or substantially all of Licensee's assets. The issuance of stock by Licensee shall not be deemed to be an assignment under the provisions of this Paragraph.

Subject to the provisions of this Paragraph, this Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

21. SUBLEASE AUTHORITY:

Licensor acknowledges that Licensee's intent is to design the Tower and Facilities to accommodate sublicensing in the Premises to FCC licensed wireless carriers. Licensee shall not sublicense in the Premises to FCC licensed wireless carriers, in whole or in part, without Licensor's written consent. Such consent shall not be unreasonably withheld, conditioned, or delayed. Prior to sublicensing to FCC licensed carriers in the Premises, Licensee shall provide to Licensor a copy of the sublicensee's application, construction drawings, sublease agreement and construction schedule. Licensee shall not sublicense the Premises, in whole or in part, to unlicensed wireless carriers or other entities, without Licensor's written consent, which consent shall be in Licensor's sole and absolute discretion. Licensor hereby explicitly reserves the right to condition such consent upon additional financial consideration if the sublease is less than \$1750 per month (or \$1250 per month for DISH Wireless).

22. CASUALTY/CONDEMNATION:

In the event there is a total or partial destruction of the Premises by fire or other casualty (hereinafter, a "Casualty") and the Premises are, in Licensee's judgment, thereby rendered insufficient for Licensee's continued operations thereat and/or restoration thereof would not, in Licensee's reasonable judgment, be economically feasible and/or such restoration could not, in Licensee's reasonable judgment, be accomplished within a period of ninety (90) days from the date of such Casualty, Licensee shall have the right to terminate this Agreement upon thirty (30) days' notice to Licensor. In the event Licensee elects not to terminate this Agreement,

- (a) Licensee shall have the right to restore those portions of the Premises upon which its Tower and Facilities are located and to reconstruct same thereupon at Licensee's sole cost and expense.

27. LICENSOR'S REPRESENTATIONS:

Licensor covenants, represents and agrees it has the full right, power and authority to enter into, execute and deliver this Tower Construction Agreement.

28. SURVIVORSHIP:

This Agreement shall be binding upon and shall inure to the benefit of any respective successors and assigns of Licensor and Licensee, subject to prior restrictions on assignments by Licensee.

Notwithstanding the foregoing, in the event there is any successor to Licensee, Licensee and/or such successor must notify Licensor of such succession within five (5) days after such event.

29. SEVERABILITY:

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

30. NOTICES:

All notices hereunder must be in writing and shall be validly given if sent via Registered or Certified Mail, Return Receipt Requested, addressed as follows (or any other address that the party to be notified may have designated to the sender by like notice):

To Licensor: Union Pacific Railroad Company
 1400 Douglas Street - 0640
 Omaha, Nebraska 68179
 Attn.: Mike Wallman

To Licensee: CitySwitch – II, LLC
 1900 Century Place, Suite 320
 Atlanta, GA 30345
 Attn: Legal

31. AUTHORITY TO SIGN:

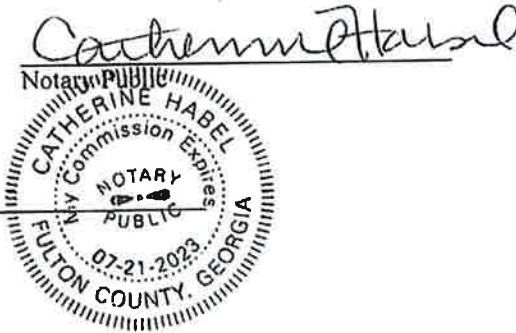
Licensor and Licensee each represent that the signatories of this Agreement presently have full authority to enter into this Agreement and to bind and obligate their respective organizations to the terms, rights and obligations under this Agreement.

ACKNOWLEDGMENT OF LICENSEE:

STATE OF GEORGIA)
) ss.:
COUNTY OF FULTON)

On this 21 day of MARCH, 2021 before me personally appeared ROB RAVILLE
known to me (or proved to me on the basis of satisfactory evidence) to be the persons
described in and who executed the foregoing instrument, and acknowledged that she executed the same as his free
act and deed.

WITNESS my hand and Official Seal at office this 21 day of MARCH, 2021.



My Commission Expires: 07-21-2023

ACKNOWLEDGMENT OF LICENSOR:

STATE OF Nebraska)
) ss
COUNTY OF Douglas)

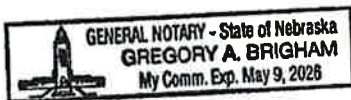
On this 3rd day of May, 2022, Chris D. Gobik before
me personally appeared known to me (or proved to me on the basis of satisfactory evidence) to be the persons
described in and who executed the foregoing instrument, and acknowledged that she executed the same as his free act
and deed.

WITNESS my hand and Official Seal at office this 3rd day of May, 2022



My Commission Expires:

May 9, 2026



http://www.up.com/cs/groups/public/@uprr/@suppliers/documents/up_pdf_natedocs/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: 

BY: 

PRINT NAME: CHRIS D. GOBLE

PRINT NAME: Robert Raviile
President & CEO

TITLE: Assistant Vice President - Real Estate

TITLE: _____

DATE: 5/3/2022

DATE: 3/21/22

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 ²
			Residential (dw/ac) ¹	Other Uses (people/ac) ²	
A	Runway Protection Zone or within Building Restriction Line	<ul style="list-style-type: none"> High risk High noise levels 	0	10	All Remaining
B1	Approach/Departure Zone and Adjacent to Runway	<ul style="list-style-type: none"> Substantial risk - aircraft commonly below 400 ft. AGL or within 1,000 ft. of runway Substantial noise 	0.1	100	30%
B2	Extended Approach/Departure Zone	<ul style="list-style-type: none"> Significant risk - aircraft commonly below 800 ft. AGL Significant noise 	1	100	30%
C	Common Traffic Pattern	<ul style="list-style-type: none"> Limited risk - aircraft at or below 1,000 ft. AGL Frequent noise intrusion 	8	200	15%
D	Other Airport Environs	<ul style="list-style-type: none"> Negligible risk Potential for annoyance from overflights 	No Limit	No Limit	No Requirement

Zone	Additional Criteria		Examples	
	Prohibited Uses	Other Development Conditions	Normally Acceptable Uses	Uses Not Normally Acceptable
A	<ul style="list-style-type: none"> All structures except ones with location set by aeronautical function Assemblages of people Objects exceeding FAR Part 77 height limits Hazards to flight⁶ 	<ul style="list-style-type: none"> Dedication of aviation easement 	<ul style="list-style-type: none"> Aircraft tiedown apron Pastures, field crops, vineyards Automobile parking 	<ul style="list-style-type: none"> Heavy poles, signs, large trees, etc.
B1 and B2	<ul style="list-style-type: none"> Schools, day care centers, libraries Hospitals, nursing homes Highly noise-sensitive uses Above ground storage Storage of highly flammable materials Hazards to flight⁶ 	<ul style="list-style-type: none"> Locate structures maximum distance from extended runway centerline Minimum NLR⁷ of 25 dBA in residential and office buildings Dedication of aviation easement 	<ul style="list-style-type: none"> Uses in Zone A Any agricultural use except ones attracting bird flocks Warehousing, truck terminals Single-story offices 	<ul style="list-style-type: none"> Residential subdivisions Intensive retail uses Intensive manufacturing or food processing uses Multiple story offices Hotels and motels
C	<ul style="list-style-type: none"> Schools Hospitals, nursing homes Hazards to flight⁶ 	<ul style="list-style-type: none"> Dedication of overflight easement for residential uses 	<ul style="list-style-type: none"> Uses in Zone B Parks, playgrounds Low-intensity retail, offices, etc. Low-intensity manufacturing, food processing Two-story motels 	<ul style="list-style-type: none"> Large shopping malls Theaters, auditoriums Large sports stadiums Hi-rise office buildings
D	<ul style="list-style-type: none"> Hazards to flight⁶ 	<ul style="list-style-type: none"> Deed notice required for residential development 	<ul style="list-style-type: none"> All except ones hazardous to flight 	

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 2.6.
- 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/Impcrit.