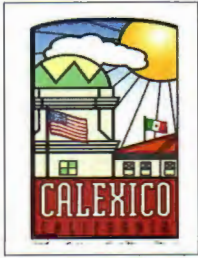


**AGENDA  
ITEM**

**13**



# AGENDA STAFF REPORT

**DATE:** August 18, 2021

**TO:** Mayor and City Council

**APPROVED BY:** Miguel Figueroa, City Manager *MF*

**PREPARED BY:** Andrew McCardle and Gail Karish, City Attorney's  
Christopher Velasco, Contract Planner

**SUBJECT:** Zoning Determination that a 70-Foot Macro Cell Tower is Not Considered a Public Facility in R Zones for the Reasons Described in the Zoning Determination Report

=====

## Recommendation:

The Planning Division is hereby forwarding the Planning Commission's recommendation, based on the analysis in the Director's Report, to deny the Applicant's petition that the proposed 70-foot macro cell tower be considered a "public facility" in the R Zone.

## Background:

On October 27, 2020 the Planning Division received an application for the placement of a 70-foot macro cell tower at 902 E 3<sup>rd</sup> Street, otherwise known as APN: 058-551-029. The applicant – Vertical Bridge – is seeking to place the 70-foot macro cell tower in the back yard of a property zoned Residential as RC – Residential Condominium. The applicant did not submit a complete application. The applicant had resubmitted the application, and it was reviewed beginning on June 21, 2021. The submitted application is now complete and the Planning Division has reviewed the Uniform Application. The application would be denied because the proposed cell tower is not a listed permitted use in Residential Zones. See Section 17.03.110. However, the applicant is seeking a determination that the proposed macro cell tower would be considered a "public facility" under the Zoning Code. "Public facilities" are permitted in Residential Zones.

On July 1, 2021, the applicant signed a Tolling Agreement that agreed to extend the time for action on the main application for the proposed tower

AGENDA  
ITEM  
**13**



while the City considered the applicant's request for a determination of similar use.

The applicant City Code Section 17.01.420 allows an application for determination of similar uses. City Code Chapter 17.01, Article IV. – "Zoning Determination," contains the process and required findings for a determination of similar use application.

Per Section, 17.01.430, when an application is submitted, the Planning Director shall review the application materials and draft a report of the findings for the Planning Commission. The Planning Commission shall then review the report and forward a recommendation to the City Council to take action on the application at its next meeting.

The Planning Director drafted a report, which is attached. Please see the Discussion & Analysis section below for more information on how this Zoning Determination was developed in compliance with Chapter 17.01, Article IV – Zoning Determination.

The item was presented to the Planning Commission on July 26, 2021 at a duly noticed public meeting. Testimony was heard from both the Planning Division and the applicant. The Planning Commission voted unanimously in favor of the following statement:

**ZONING DETERMINATION THAT A 70-FOOT MACRO CELL TOWER IS NOT CONSIDERED A PUBLIC FACILITY IN R ZONES FOR THE REASONS DESCRIBED IN THE ZONING DETERMINATION REPORT**

The Planning Commission recommends that the City Council concur with its *Zoning Determination that a 70-Foot Macro Cell Tower is not considered a public facility in R Zones for the reasons stated in the Zoning Determination Report.*

On August 5, 2021 a Notice of Public Hearing for the City Council meeting on this item was published in the Calexico Chronicle and this notice was also mailed to properties within 500 feet of the subject parcel. Once the City Council makes a decision on the Applicant's request for a determination of similar use, that decision will be used by the Planning Commission to take action on the Applicant's main variance application. The Planning Commission's decision on the variance application may be appealed to the City Council.

**Discussion & Analysis:**

According to City Code Section 17.01.440, four findings must be made to permit or classify an unlisted use. Those findings, along with a brief summary of the Director's assessment with regard to this application, are listed below. A full explanation is provided in the attached Director's report.

1. *The use furthers the objectives of the zone*

The proposed 70-foot macro cell tower does not further the objectives of the zone because it would conflict with multiple purposes of the City's residential zones, generally, and the RC zone, specifically, which are listed in Section 17.03.100 of the City Code. Therefore, a positive determination cannot be made for this finding.

- 2. The subject use and its operations are compatible with the uses permitted in the zone*

Section 17.03.100 of the City Code states that additional uses that are "complimentary to, and can exist in harmony with, a residential condominium development" may be permitted in an RC zone. The subject use, a privately-owned 70-foot macro cell tower is not compatible with uses permitted in the RC zone because it is not harmonious with other private facilities that the City Code allows in the zone. Therefore, a positive determination cannot be made for this finding.

- 3. The subject use is similar to one or more uses permitted in the zone*

The subject use, a privately-owned and -operated macro cell tower is not similar to public facilities. Section 17.03.110(C)(5) of the City Code defines public facilities that are permitted in Residential Zones are "public facilities including, but not limited to, city headquarters, libraries, parks, public offices, substations, reservoirs, pumping plants, and similar installations." The subject use is also not similar to any other listed commercial or private facility use permitted for the residential zones, such as agricultural use, a home occupation, a private educational institution, or a private recreational facility. Therefore, a positive determination cannot be made for this finding.

- 4. The subject use will not cause substantial injury to the property in the zone within which it is proposed to be located or in any abutting zone.*

The subject use, a privately-owned and -operated macro cell tower would create substantial injury to the property in the zone by obstructing views since it would be twice the permitted height limit in the R Zones. Further, the 70-foot macro cell tower would have to be illuminated at all times due to its height and location within the direct flight path of the Calexico Airport. The subject use would also create commercial traffic into an R-zoned property during construction, ongoing maintenance, and inspection periods. Therefore, a positive determination cannot be made for this finding.

**Based on the foregoing, Miguel Figueroa, City Manager requests that the City Council consider the Planning Commission's recommendation to deny the Applicant's request for a determination of similar use and not permit the macro cell tower use in the City's RC zone, and make its determination.**

**Coordinated With:**

Planning Department.  
City Attorney's Office.

**Fiscal Impact:**

No impact on the General Fund.

**Attachment(s):**

1. Application UA 2021-04.
2. Important Notice – 04/21/2021.
3. Zoning Determination Report.





City of Calexico  
Development Services Department – Planning Division  
**Zoning Determination Report**  
Phone: 760.768.2105 Fax 760.357.7862 Email: [planning@calexico.ca.gov](mailto:planning@calexico.ca.gov)  
[www.calexico.ca.gov](http://www.calexico.ca.gov)

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Included as an Attachment to Planning Commission Agenda for July 26, 2021.

Honorable Planning Commission of the City of Calexico  
608 Heber Avenue  
Calexico, CA 92231

July 21, 2021

**Re: Zoning Determination Report for Uniform Application 2021-04; Vertical Bridge, Applicant**

***Request for Determination of Similar Uses***

The Applicant – Vertical Bridge (on behalf of T-Mobile) – has submitted an application dated for a determination of similar uses for a proposed 70-foot macro cell tower that the Applicant wants to install in the back yard of a property zoned Residential as RC – Residential Condominium. The property address is 902 E 3<sup>rd</sup> Street, otherwise known as APN: 058-551-029. The area near the proposed installation site is full of modest single-family residential and one- or two-story multi-unit dwellings built on small lots. The property is a corner lot that currently has one single-floor residential dwelling and another single-floor structure. The property has an open dirt lot in the rear, which is bordered by an unfinished, dirt alleyway that allows access to the properties. The neighboring property has a single-floor, residential dwelling with a similarly-sized rear yard. There is little space between the properties.

Here, the Applicant seeks a determination that the proposed cell tower would be considered a similar use to public facilities that are expressly permitted in Residential Zones under the City's zoning code. Section 17.03.110(C)(5) of the Calexico Municipal Code defines public facilities that are permitted in Residential Zones as “public facilities including, but not limited to, city headquarters, libraries, parks, public offices, substations, reservoirs, pumping plants, and similar installations.”

***Process for Evaluating Requests for Determination of Similar Uses***

City of Calexico Municipal Code (City Code) Section 17.01.410 states that “in order to ensure that the zoning regulations will permit similar uses in each zone, the planning commission and/or the city council, upon its own initiative or upon written request shall determine whether a use, not specifically listed as a permitted or conditional use, shall be deemed a permitted use or a conditional use, in one or more zones, on the basis of similarity to uses specifically listed.”

cc: Miguel Figueroa, City Manager

Per Section 17.01.430, “the planning director shall make such investigations of the application as necessary to compare the nature and characteristics of the proposed use with those uses specifically listed and shall make a report of the findings to the planning commission. The planning commission shall review said report and forward its recommendation to the city council for their action.”

Per Section 17.01.440 of the City Code, the City Council must be able to make all four of the findings listed below in order to permit or classify an unlisted use:

1. The use furthers the objectives of the zone;
2. The subject use and its operations are compatible with the uses permitted in the zone;
3. The subject use is similar to one or more uses permitted in the zone; and
4. The subject use will not cause substantial injury to the property in the zone within which it is proposed to be located or in any abutting zone.

### ***Director’s Report on Findings***

After investigating the application and comparing the nature and characteristics of the proposed use with those uses specifically listed, the Planning Director does not believe that positive determinations can be made for the required findings, for the reasons discussed below.

#### ***1. The use furthers the objectives of the zone***

City Code Section 17.03.100 discusses the general purposes of residential zones and zone-specific objectives. All residential zones have the following purposes, among others: (a) to reserve appropriately located areas for family living at a broad range of dwelling unit densities consistent with the general plan and with sound standards of public health, safety and welfare; (b) to ensure adequate light, air, privacy, and open space for each dwelling; (c) to minimize traffic congestion and to avoid the overloading of public services and utilities; (d) to protect residential properties from noise, illumination, unsightliness, odors, smoke and other objectionable influences; and (e) to facilitate the provision of utility services and other public facilities commensurate with anticipated population, dwelling unit densities, and service requirements. City Code Section 17.03.100 also states that the RC zone specifically is:

“...intended as an area for the development of residential condominiums with provisions for adequate light, air, open space and landscaped areas at a maximum density of twenty units per net acre. Additional uses are permitted that are complimentary to, and can exist in harmony with, a residential condominium development.”

Here, the Applicant’s proposed macro cell site tower does not further the objectives of the zone. In fact, the proposed structure would be in conflict many of the purposes listed above.

The maximum height in the residential zone is 35 feet or two (2) stories, according to City Code Section 17.03.120 -Property development standards—R zones. The proposed 70-foot



macro cell tower would exceed the height limit by 35 feet. The surrounding neighborhood is a mixture of apartment buildings and single-family residential uses. The presence of tower that is double the allowed height limit would create an unsightly view for the residents near the site. Additionally, the tower would have to have the top portion illuminated due to both its height and location in the pathway of the Calexico Airport, creating constant illumination. These impacts are also in direct conflict with objective (d) listed above.

Additionally, the proposed macro cell tower would create off-site commercial traffic in the residential zone, as these towers are routinely serviced by multiple companies, which could create dust as the alleyway is unpaved and could block the alleyway with service trucks. These impacts are in direct conflict with objective (d) listed above.

With regard to the RC zone, the proposed tower is not related to the development of condominiums on that specific site, and by posing aesthetic, light, and construction noise impacts, it would not exist in harmony with condominium development.

Based on the foregoing, the proposed project does not further the objectives of the zone, and a positive determination cannot be made for Finding 1.

**2. *The subject use and its operations are compatible with the uses permitted in the zone***

As noted above, in the RC zone “[a]dditional uses are permitted that are complimentary to, and can exist in harmony with, a residential condominium development.” (Section 17.03.100) \*\*Cond is primary purposes, City lists out other uses, and it says that they are harmonious. We should list those, and then we say that a cell tower is not compatible with those harmonious uses because they have spaces for residents to gather (or some other categorization of those properties

Per the chart in City Code Section 17.03.110, the certain private businesses and facilities, such as daycares, schools, churches, and recreational facilities, allowed in and harmonious with the use of residential zones. The proposed 70-foot macro cell tower is not harmonious with these facilities because they provide places for people to gather, attend events, or engage in activities. The tower does not provide the same services or benefits for the community, and a positive determination therefore cannot be made for Finding 2.

**3. *The subject use is similar to one or more uses permitted in the zone***

The subject use, a privately-owned and -operated macro cell tower, is not similar to public facilities, nor is it similar to any other listed commercial or public facility use permitted for the R Zones.

**a. Public Facilities**

According to City Code Section 17.03.110, certain private and public facilities are permitted in residential zones. The applicant suggests that the macro cell tower is similar to public facilities.



According to Section 4.1 of the City's 2007 General Plan update, "public facilities and services are responses...to basic human needs such as safety, health, education, and worship. They include police, hospitals, schools, churches, and safe drinking water. Public facilities and service are provided by all levels of government as well as other public and quasi-public organization."

Further, the City Code lists the following structures as examples of "public facilities" permitted in residential zones: city headquarters, libraries, parks, public offices, substations, reservoirs, pumping plants, and similar installations.

The Applicant argues that cell towers are part of a wireless network that provides emergency communications, 911 services, and access to emergency information, and it is therefore providing basic human needs. While wireless facilities have some similarity to public facilities generally, the proposed macro tower is not similar to the specific public facilities permitted in residential zones because it is an order of magnitude beyond those types of public facilities. Not only is the tower physically large (twice as tall as the zone's height limit) but it has a far reach that could extend beyond the zone because macro cell towers can propagate signals over long distances.

Moreover, the Applicant is not a provider of wireless services but rather a tower company that will attempt to sublease space on the proposed tower to wireless providers as tenants. As such, the Applicant is not a public or quasi-public organization.

Therefore, the proposed use is not similar to the public facility uses permitted in the zone, and a positive determination cannot be made for Finding 3.

#### **b. Private Facility Uses**

The Applicant did not argue that it is similar to a private facility use, but the Director nonetheless evaluated this consideration in its analysis of the application. The macro cell tower is not similar to any of the private facilities permitted in residential zones because it is not an agricultural use, a home occupation, a private educational institution, or a private recreational facility.

Regarding home occupation uses specifically, City Code Section 17.01.900(A)(85) defines a "home occupation" as "an occupation customarily conducted entirely within a dwelling by the occupant of the dwelling as a secondary use in connection with which there is no display, no stock in trade or commodity sold upon the premises, and no person employed." Here, from the home owner's perspective, this is not the type of activity that one can engage in as a home occupation. This is the property owner leasing out a portion of its property entirely outside of the dwelling to a commercial entity who will conduct commercial business (operating a cell tower with multiple tenants) from that portion of the property.

City Code Section 17.11.200 lists 11 conditions that a project must meet to be permitted as a home occupation. See Exhibit 1 for the full conditions list. The proposed use fails to comply with Conditions 1, 2, 4, 5, 8, 10, and 11.

First and foremost, the proposed use would be owned and operated by a private corporation and not the resident of the dwelling unit, which does not satisfy Condition 5. Additionally, the proposed use would be conducted entirely outside the dwelling, which does not satisfy Condition 2. The proposed use would create stock in trade or exterior storage of materials in the conduct of a home occupation as the proposed structure is in the southern portion of the parcel outside the primary dwelling unit, which does not satisfy Condition 1. The proposed use could create interference with home Wi-Fi or other nearby frequencies, which does not satisfy Condition 4. The proposed use would result in radiofrequency and other safety signs being placed on the property (likely affixed to the tower), which does not satisfy Condition 8. The proposed use would result in vehicular or pedestrian traffic that exceeds normal levels during construction, routine maintenance, and inspection periods, which does not satisfy Condition 10. Finally, the macro cell tower equipment is not normally incidental to residential use, which does not satisfy Condition 11.

The home occupations section of the City Code was created to regulate commercial activities in the residential zone for the preservation of orderly development and to protect the low-rise residential character. Based on the foregoing, the proposed macro cell tower does not qualify as a home occupation permitted in the City's residential zones.

**4. The subject use will not cause substantial injury to the property in the zone within which it is proposed to be located or in any abutting zone.**

As was explained under Finding 1 above, the subject use, a privately-owned and -operated macro cell tower would create substantial injury to the property in the zone by, among other things, obstructing views since the tower would be double the permitted height limit in the R Zone. The 70-foot macro cell tower would have to be illuminated at all times due to its height and location within the direct flight path of the Calexico Airport. Additionally, the subject use would create commercial traffic into an R-zoned property during construction, ongoing maintenance, and inspection periods. Finally, the use of the unpaved alleyway for commercial traffic would create dust. Therefore, a positive determination cannot be made for Finding 4.

**Based on the foregoing, the Planning Director requests that the Planning Commission recommend that the City Council deny the Applicant's request for a determination of similar use and not permit the macro cell tower use in the City's RC zone.**

Sincerely,

**Christopher Velasco**

Digitally signed by Christopher Velasco  
DN: cn=Christopher Velasco, o=City of Calexico, ou=Planning  
Services, email=planning@calexico.ca.gov, c=US  
Date: 2021.07.22 08:56:34 -07'00'

Christopher Velasco

Contract Planner on Behalf of the Acting Planning Director, Miguel Figueroa

## Exhibit I

### **Article II. - Home Occupations**

#### **17.11.200 - Home occupations.**

*A. Home occupations may be permitted only when in compliance with the conditions listed herein. A permit must be issued by the planning director prior to operation of such use. The fee shall be in accordance with those adopted by city council resolution.*

- 1. There shall be no stock in trade or exterior storage of materials in the conduct of a home occupation.*
- 2. A home occupation shall be conducted entirely within a dwelling, if in an attached or a detached garage shall not impede the use of said garage for vehicle storage.*
- 3. No exterior alterations of the dwellings shall be made which would change the residential character of the home to accommodate the home occupation.*
- 4. Electrical or mechanical equipment which creates visible or audible interference in radio or television receivers or causes fluctuations in line voltage outside the dwelling unit shall be prohibited.*
- 5. Only the residents of the dwelling unit may be engaged in the home occupation.*
- 6. There shall be no sale of goods on the premises.*
- 7. The establishment and conduct of a home occupation shall not change the principal character or use of the dwelling unit involved.*
- 8. There shall be no signs other than those permitted by this chapter.*
- 9. The required residential off-street parking shall be maintained.*
- 10. A home occupation shall not create vehicular or pedestrian traffic in excess of that which is normal for the zone in which it is located.*
- 11. No vehicles or trailers (including pick-up trucks and vans) or construction or other equipment, except those normally incidental to residential use, shall be kept on the site.*





**City of Calexico**  
Development Services Department - Planning Division

**UNIFORM APPLICATION**

608 Heber Avenue, Calexico, CA 92231

• Phone: (760) 768-2118 • Fax: (760) 357-7862 • Email: [planning@calexico.ca.gov](mailto:planning@calexico.ca.gov)

[www.calexico.ca.gov](http://www.calexico.ca.gov)

Application Types (Please indicate all of the planning applications you wish to apply for:

- |   |  |
|---|--|
| <input type="checkbox"/> Lot Line Adjustment (4 lots or less) | <input type="checkbox"/> Conditional Use Permit (CUP) [Non-Cannabis] |
| <input type="checkbox"/> Subdivision (4 lots or less)         | <input type="checkbox"/> Variance Request                            |
| <input type="checkbox"/> Tentative Parcel Map Project (TPM)   | <input type="checkbox"/> Other Development Application Type          |
|   | List Project Type: <u>Telecommunication (monopalm)</u>               |

**PROJECT INFORMATION:**

Project Address/Location: 902 E 3rd Street

Assessor Parcel Number(s) 058-551-029

Proposed Project Description *(a detailed project description must be included as a separate attachment/letter)*

Current General Plan Designation: Commercial - Vacant

Current Zoning: RC-Residential Condo

Proposed General Plan Designation: Current-Special use (Telecommunication-Monopalm)

Proposed Zoning: Current-RC-Conditional Use Permit including Variances (Height & Setbacks)

**APPLICANT INFORMATION:**

Name: Vertical Bridge/ Gary Cassel

Address: 3530 E Atlanta Ave, Phoenix AZ 85040

Phone Number:  Email: GaryCassel@Clearblueservices.com

I hereby authorize this application and certify that all filling requirements have been satisfied for my application. I also acknowledge that any missing items may delay the processing of my application.

 10/27/20  
Signature of Applicant Date

**AUTHORIZED REPRESENTATIVE:**

Name: Gary Cassel C/o Vertical Bridge

Phone Number:  Email: GaryCassel@Clearblueservices.com

**OFFICIAL USE ONLY**

Uniform Application No.  
UA 2021-04

Project Planner:  
Christopher Velasco



**City of Calexico**  
 Development Services Department - Planning Division  
**UNIFORM APPLICATION**

**PROPERTY OWNER INFORMATION AND PERMISSION**

Name: Andreas Sarkis Yanik

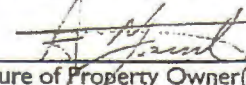
Address:

Phone Number:   Email: yanikandreas@gmail.com

I certify under penalty of the laws of the State of California that I am the property owner of the property that is the subject matter of this application and I am authorizing to and hereby consent to the filing of this application and acknowledge that the final approval by the City of Calexico, if any, may result in restrictions, limitations and construction obligations being imposed on the real property. (If more properties or owners are involved please provide additional sheets.)

**Andreas Sarkis Yanik**

Printed Name of Property Owner(s):



Signature of Property Owner(s)

Signature of Property Owner(s)

Check here if additional Property Owner Certifications are attached to this application.

**APPLICANT BILLING ADDRESS**

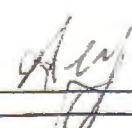
Name: Vertical Bridge / Gary Cassel

Address:

Phone Number:  Email: GaryCassel@Clearblueservices.com

**ACKNOWLEDGMENT OF FINANCIAL RESPONSIBILITY BY THE APPLICANT**  
 (Project representative signatures will not be accepted.)

I acknowledge and certify that with this development application I am financially obligated to the City of Calexico for all expenses related to the time and effort spent by the employees, agents, consultants, and legal representatives that are used to process this/these applications. I understand that the City processes development applications on a deposit based fee system which requires an initial application processing deposit payment prior to beginning any process work. Further, I understand that once the project application deposit balance falls to \$2,500 an additional deposit, equal to the original application deposit fee amount, must be made within 10 days of notification from the City. I further acknowledge that if the additional application deposit fee payment is not been made within the required 10 days as required by the City, the City will discontinue all work on this/these applications and will not schedule the project for a hearing (if one is required). I also acknowledge that if I fail to replenish the application deposit account within six (6) months of notification from the City, I understand that this/these applications will be automatically deemed withdrawn by the City, and that a new development application and deposit fee will be required to restart the project processing.

owner signature: 





**City of Calexico**  
Development Services Department - Planning Division  
**UNIFORM APPLICATION**

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**ACKNOWLEDGMENT OF INDEMNIFICATION RESPONSIBILITY BY THE APPLICANT**  
(Project representative signatures will not be accepted.)

The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. City shall promptly notify the applicant of any Action brought and request that applicant defend the City. It is expressly agreed that applicant may select legal counsel providing the applicant's defense and the City shall have the right to approve separate legal counsel providing the City's defense. The applicant shall reimburse City for any attorneys' fees, costs and expenses directly and necessarily incurred by the City in the course of the defense. Applicant agrees that City will forward monthly invoices to Applicant for attorneys' fees, costs and expenses it has incurred related to its defense of any Action and applicant agrees to timely payment within thirty (30) days of receipt of the invoice. Within fourteen (14) days of an Action being filed, applicant agrees to post adequate security or a cash deposit with City in an amount to cover the City's estimated attorneys' fees, costs and expenses incurred by City in the course of the defense in order to ensure timely payment of the City's invoices. The amount of the security or cash deposit shall be determined by the City. City shall cooperate with applicant in the defense of any Action

Gary Cassel / C/o Vertical Bridge

Applicant Printed Name

Signature

10/27/2020

Date Signed





**City of Calexico**  
Development Services Department - Planning Division  
**UA Application Submittal Requirements for**  
**Tentative Parcel Maps, Subdivisions & Lot Line Adjustments**

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**PURPOSE:**

Both California State Law and the Calexico Municipal Code require that when any parcel of contiguous parcels in one ownership is proposed to be divided into less than five parts now, or in the future, a parcel map must be processed through the City.

**II. SUBMITTAL REQUIREMENTS:**

1. Application form completely filled out with all required signatures.
2. All required plans and exhibits as described in the application.

**III. PROCEDURE:**

1. Schedule a time to discuss preliminary project plans and zoning with Planning & Engineering Division staff, other City Departments for project requirements, including necessary application submittals. The General Plan should be consulted for land use and street improvements.
2. Submit a complete application with all required signatures, application fee, environmental assessment form (if necessary) and any other applications (i.e. Encroachment Permit, Conditional Use Permit).
3. Staff will review the application and determine if it is complete within 10 days from the date the project is submitted. The application will not be processed if it is deemed incomplete. After the application is deemed complete, the project is circulated to other City departments and local agencies for comments and conditions.
4. After the project has received preliminary approval from the Planning and Engineering Division, staff will prepare a written staff report and the project is scheduled for Planning Commission (meetings held on the 2nd and 4th Mondays of each month) and a legal notice and advertising is published and circulated in a local newspaper least 10-days prior to the meeting. Adjacent property owners are also notified at least 10 days before the meeting, advertising the public hearing. There is a 15-day appeal from the day of a decision taken by the Planning Commission.
5. If the project involves a change of zone, general plan amendment, development agreement, exceptions, or if the project is appealed or called up for review, it will be scheduled for a public hearing with the City Council (meetings held on the 2nd and 4th Thursdays of each month). Staff will prepare a written report and a legal notice is published and mailed to adjacent property owners/tenants 10-21 days before the meeting. This process is approximately 2 to 4 weeks after the Planning Commission decision and approximately 8 to 12 weeks after the project has been submitted.
6. Once the project has been approved and entitled, final conditions of approval will be mailed to the applicant/property owner.
7. Once final plans and conditions of approval have been prepared, final maps, grading and improvement plans may be processed through the Development Services Department.



**City of Calexico**  
Development Services Department - Planning Division  
**UA Application Submittal Requirements for  
Development Agreements and Hazardous Waste  
Statement**

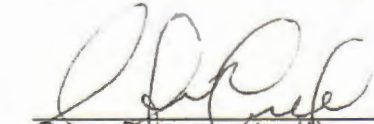
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- Two (2) copies of the current Preliminary Title Report of all properties covered by the application that is not more than six months old at time of application filing and a copy of all legal documents (deed, easement, etc.) mentioned in the Preliminary Title Report.

**HAZARDOUS WASTE SITE DISCLOSURE STATEMENT:** Government Code Section 65962.5 requires the applicant for any development project to consult specified state-prepared lists of hazardous waste sites and submit a signed statement to the local agency indicating whether the project is located on or near an identified site. Under the statute, no application shall be accepted as complete without this signed statement. I (we) certify that I (we) have investigated our project with respect to its location on or near an identified hazardous waste site and that my (our) answers are true and correct to the best of my (our) knowledge. My (Our) investigation has shown that:

- The project is not located on or near an identified hazardous waste site.  
 The project is located on or near an identified hazardous waste site.

- Please list the location of the hazardous waste sites(s) on an attached sheet.

  
\_\_\_\_\_  
Owner Representative (1)

10/27/2020

\_\_\_\_\_  
Date

N/A  
\_\_\_\_\_  
Owner Representative (2)

N/A

\_\_\_\_\_  
Date





**City of Calexico**  
Development Services Department - Planning Division  
**UA Application Environmental Assessment Form**

The State of California requires cities to assess the environmental impact of all development projects before permits for such action are issued. The attached form will assist you in presenting the environmental effects of your project. The form includes information about the project and an assessment of the potential environmental impacts. You may be asked to answer other questions and submit additional information to determine the level of environmental review required for the project.

Developer or Applicant: Vertical Bridge / Gary Cassel  
Contact Person: Gary Cassel  
Address: [Redacted] City: Phoenix State: AZ Zip: 85040  
Telephone: [Redacted] Email: GaryCassel@Clearblueservices.com  
Address/ APN(s) of Project: 902 E 3rd Street / 058-551-029

Identify any other related permits and other public approvals required for this project including those required by the City, regional, State, Federal agencies, not including approvals from the City of Calexico's Fire & Police departments: Zoning/ Building Permit / FAA / FCC/ Letter to inform Customs Enforcement /

Proposed Use of Site (project described in this form): Vertical Bridge to build a 65' (70' Top of Frawns )  
within an 8' high 25' x 35' compound wall (painted and textured to match existing building

Surrounding Land Uses: Commercial building & ROW, West / Residential, East / Residential & ROW, North /  
Alleyway, South

Site Size (Square Feet or Acres): 15,245 Number of Floors of Construction: 1

**For Residential Development:**

Number of Units: N/A Unit Sizes: N/A

Units per Acre: N/A Lot Sizes: N/A

No. of Required Parking Spaces, required & proposed: N/A EV Charging Spaces: N/A

**For Commercial, Industrial and Other Development:**

Type of Development: Telecommunication site build for carrier T-Mobile and future carrier (collocatable)

Green House Gas Mitigation Measures: N/A

Number of Buildings: 1 Size of Buildings: 25' x 35'

No. of Required Parking Spaces, required & proposed: 1 EV Charging Spaces: N/A





## City of Calexico

Development Services Department - Planning Division

### UA Application Environmental Assessment Form (continued from previous page, please use additional sheets as necessary)

Describe the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural or scenic aspects.

Topography is flat /soil is being evaluated, stable & solid / no plants/ no animals. existing building blocks

Describe any existing structures onsite, and use of these structures.

Existing 1 1/2 story commercial building, west, and existing building ,North / Existing building ,East

Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects.

Existing building, West is an old market

Describe the typed of surrounding land use, intensity of land use, and sale of development.

old Market to the West, an older apartments & residential

Discuss all items checked "yes" (attach additional sheets as necessary):

Monopalm with hidden antennas within the frawns at 65' is matching up with other real palm trees in the area

	YES	NO
(1) Change existing features of the lake or substantial alteration to hills or of ground contours?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(2) Change scenic views or vistas from existing residential areas or public lands or roads?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(3) Change pattern, scale or character of general area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(4) Increase air emissions or ground water or any stream?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(5) Alter water quality or quantity of lake or ground Water or any stream?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(6) Increase existing noise levels?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(7) Is site on filled land or on slopes of 10 percent or more?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(8) Use or disposal of potentially hazardous materials, such as toxic substances, flammables or explosives?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(9) Change in demand for public services and utilities (police, fire, water, sewer etc...)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

#### CERTIFICATION

I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge.

Signature

Gary Cassel / Co Vertical Bridge

Name of Form Preparer

GaryCassel@Clearblueservices.com

Email

10/27/20

Date

Phone



City of Calexico  
Development Services Department – Planning Division  
**Important Notice 04/21/2021**  
Phone: 760.768.2105 Fax 760.357.7862 Email: [planning@calexico.ca.gov](mailto:planning@calexico.ca.gov)  
*Via Email and Certified US Mail*  
[www.calexico.ca.gov](http://www.calexico.ca.gov)

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April 21, 2021

Clear Blue Services  
Attention: Gary Cassel  
3530 E Atlanta Avenue  
Phoenix, AZ 85040

**Re: Uniform Application 2021-04; Vertical Bridge, Applicant**

Dear Mr. Cassel,

I am writing first to advise you that I have taken over the review of the above-referenced application from Mr. Romero who is no longer overseeing this project for the City of Calexico and second to address several issues that are outstanding with respect to this application.

Your application seeks to place a cell tower in the back yard of a property zoned Residential. The proposed cell tower would be considered a public utility facility under the Zoning Code. Public utilities are expressly permitted as conditional uses in numerous zones including the Open Space Zone (17.09.520), the Industrial Zone (17.07.120) and the Agriculture Zone (17.09.420), but public utilities are not listed as permitted or conditional uses in Residential Zones. Per Section 17.03.110.C.5. public facilities that are permitted in Residential Zones are “public facilities including, but not limited to, city headquarters, libraries, parks, public offices, substations, reservoirs, pumping plants, and similar installations.”

Section 17.01.420 allows an application for determination of similar uses. However, you have not applied for a determination that the cell tower would be a similar use as the public facilities that are permitted in Residential Zones. The required findings to make a similar use determination are in Section 17.01.440. The procedure requires a planning director report, which is reviewed by the Planning Commission and then their recommendation is forwarded to the City Council for a decision. Alternatively, Section 17.01.580 allows an application for a conditional use permit to be made at the same time as application for a change in zone boundaries including the same property. However, you have also not applied for the zoning change to change this property to one that would allow public utilities.

In light of the above, the Planning Division does not believe this is a suitable location for a cell tower and would recommend that you withdraw the application and find a more suitable location for the proposed telecommunications tower such as land zoned OS – Open Space, or defined as Industrial or Agricultural in the General Plan. We can refund any fees submitted for this application.



***If you do still want to continue with this application, you will have to address the deficiencies noted above. In addition, please note the following:***

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*Missing Documents:* There are several issues that need to be taken into account, in addition to those discussed above, before this process can move forward to the Planning Commission. Please see the list below:

1. FAA. This proposed site is in the direct flight path of Calexico International Airport, however, we have no information in the file indicating that you have addressed this safety matter other than identifying FAA as a required approval. Have you filed FAA form 7460-1? If so, provide a copy of that letter along with all correspondence with the agency.
2. CBP. This proposed site is approximately 560 feet from the international border with Mexico. Has Customs and Border Protection been included on this list of affected agencies advised of this application? You list in your application that you are required to send a letter to inform Customs but we have no further information on file. My concern lies in the fact that this may cause interference issues with their communications devices due to its proximity to the international border.
3. As the Lead Agency, the City of Calexico would need to conduct an Initial Study. An Initial Study is used to decide whether to prepare an Environmental Impact Report (EIR) or a Negative Declaration (Neg Dec). The lead agency can issue a Negative Declaration if it finds the proposed project will have no potential for significant impacts. If the Initial Study identified potentially significant effects resulting from the project, but the project is altered or the applicant agrees to conditions which will mitigate the identified significant impacts, then the lead agency may issue a Mitigated Negative Declaration. As the applicant, you would be responsible for covering the cost of completing an Initial Study at our hourly rate of \$174.00.
4. If the Initial Study finds substantial evidence that the project will have a significant effect on the environment, then an EIR must be prepared. Intended to provide decision makers with the necessary information to make a well-informed decision, the EIR is a detailed report that identifies the potentially significant environmental effects the project is likely to have; identifies feasible alternatives to the proposed project; and indicates the ways in which significant effects on the environment can be mitigated or avoided.
5. *Variances.* Even if this is determined to be a similar use, this proposed site would appear to require two variances, and you have only requested one. Article VI. of the Calexico Municipal Code defines the process of granting of variances; in particular, 17.01.615 - Application—Data and maps to be furnished, part G:

*The planning director may require additional information or plans, if they are necessary, to enable a determination as to whether the circumstances prescribed for the granting of a variance exist. The planning director may authorize omission of any or all of the plans and drawings required by this article, if they are not necessary.*

You have *not* asked for a setback variance. Section 17.03.120 - Property development standards—R zones sets out setback requirements for structures in R Zones. The parcel in question, 902 E 3<sup>rd</sup> Street, otherwise known as APN: 058-551-029 is Zoned as RC or Residential Condominium and designated for Medium Density Residential in the General Plan.



This same section of the Calexico Municipal Code states in *part a, number 8*, that all rear setbacks are to be at least 20 feet from the property line. Based off of the scale provided in your plans the structure seems to be 12'-14' from the property line. This is not noted in your Variance request. Please revise your submittal to address any variance request for setbacks.

You have asked for a height variance but you have not provided an explanation for the request. Section 17.03.120 of the Calexico Municipal Code limits the height of structures in all R zones to 35,' as proposed the Variance you seek from this restriction is more than double the limit.

Under Section 17.01.630 of the Zoning Code, the Planning Commission would have to make the following findings to approve of the variance:

- A. That there are special circumstances applicable to the property, (size, shape, topography, location or surroundings) or the intended use of the property, and because of this, the strict application of the zoning ordinance deprives the property of privileges enjoyed by other properties in the vicinity under identical zoning classification;
- B. That granting the variance or its modification is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone and denied to the property for which the variance is sought;
- C. That granting the variance or its modification will not be materially detrimental to the public health, safety or welfare, or injurious to the property or improvements in such vicinity and zone in which the property is located;
- D. The granting of this variance does not constitute a special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which such property is situated;
- E. The granting of this variance does not allow a use or activity which is not otherwise expressly authorized by the zoning regulation governing the parcel of property;
- F. That granting the variance or its modification will not be incompatible with the city general plan.

You have provided no information to address these findings.

*Shot Clock Status and Tolling Agreement:* In an email received by the city on January 7th, 2021 you stated that the 150-day federal "shot clock" for this application had started during the Pre-Consultation meeting on October 20th, 2020. That is incorrect. Pre-Consultation meetings are encouraged, however, they are not required.

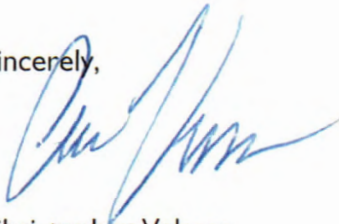
The "shot clock" for the application began on February 22, 2021 when you formally submitted a Uniform Application for both a Conditional Use Permit and a Variance Request to the Development Services Department and paid the appropriate fees to process this application and submitted Building Plans (the application was stamped received on Feb. 22 at 1:40 pm). As of the date of this letter, we are 59 days into the entitlement process.

We understand that you may disagree with the city as to when the shot clock started, and are willing to mutually agree with you as to a date for action. If you are able to provide the missing documents identified below by May 5, 2021 we can move forward to the Planning Commission by May 24, 2021 to address the application. Depending on whether you seek a similar uses

determination or a zoning change, we would then go to City Council. This shall not be construed as an admission by the City of Calexico that absent this agreement it would have failed to act within time periods required by applicable federal, state, or local laws or regulations; or that its failure to act on the application on or before the time for action described above would be a violation of the same. This is also not intended to imply or assure any particular outcome of the city's processing of the application. Except as required to give effect to this extension, neither party waives any claims or defenses it might otherwise have. If you are in agreement please counter-sign below.

Please feel free to contact me should you have any questions or would like to speak to me further.

Sincerely,



Christopher Velasco  
Contract Planner

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Accepted and Agreed for Applicant  
whom I have express authority to bind:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

END

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