

***BEFORE THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO***

A RESOLUTION OF THE SAN BENITO COUNTY PLANNING ) **Resolution 2020-08**  
COMMISSION APPROVING COUNTY FILE PLN180025, A USE )  
PERMIT TO INSTALL AND OPERATE A TELECOMMUNICATION )  
FACILITY ON A 10-ACRE AGRICULTURAL PROPERTY. )

**WHEREAS**, John Merritt, Horizon Tower, LLC, filed an application the use permit application PLN180025 on June 12, 2018, to install a new wireless telecommunications facility composed of a 95-foot-tall tower on a 2,400-square-foot lease area (60 feet by 40 feet) to support two omnidirectional antennas for transportations communications, two microwave dishes, and three future wireless telecommunications carriers (as illustrated in **Exhibit B** to this resolution); and

**WHEREAS**, the subject property, 10 Flint Road (Assessor's Parcel 018-160-027), is located in unincorporated San Benito County, California, 4 miles west of the center of Hollister and 3½ miles east of the center of San Juan Bautista and contains 10 acres with an orchard and agricultural packing facilities; and

**WHEREAS**, the subject parcel has a General Plan land use designation of Agriculture (A) and a zoning designation of Agricultural Productive (AP); and

**WHEREAS**, County staff distributed PLN180025 submitted materials to responsible public agencies for review and comment; and

**WHEREAS**, the Planning Commission has determined the project qualifies under California Environmental Quality Act Guidelines for Class 3 of Categorical Exemptions; and

**WHEREAS**, the project assists economic development per County General Plan Policy ED-3.4, serves as support to agriculture per Policy LU-3.6, facilitates the use of telecommunications technology for the public per Policy PFS-9.1, allows co-location by multiple carriers per Policy PFS-9.6, and extends or boosts rural broadband per Policy PFS-9.10; and

**WHEREAS**, in agreement with General Plan Policy PFS-9.6, the tower accommodates three wireless service provider antenna arrays in addition to the initial omnidirectional antennas, with ground space available in the lease area for future carriers' equipment; and

**WHEREAS**, the tower's initial omnidirectional antennas would serve communication needs for local and interregional truck transportation and benefit the operators and customers of these trucking services; and

**WHEREAS**, the proposed new wireless telecommunications facility may expand services to locations where existing facilities in the area are limited by terrain and distance; and

**WHEREAS**, in accordance with County Code §7.11.004(H), the proposed omnidirectional antennas and microwave dishes would not add obtrusive visual impact beyond the presence of the maximum three groupings of antennas for wireless telephone and broadband internet service; and

**WHEREAS**, the site's AP zoning allows radio transmission and related structures under a conditional use permit per San Benito County Code §25.07.022; and

**WHEREAS**, on June 17, 2020, the Planning Commission in considering the use permit application PLN180025 heard and received all oral and written testimony and evidence that was made,

presented, or filed, and all persons present were given an opportunity to hear and be heard with respect to any matter related to the petition; and

**WHEREAS**, the Planning Commission of the County of San Benito reviewed the use permit at its regularly scheduled meeting held on June 17, 2020; and

**WHEREAS**, the Planning Commission of the County of San Benito reviewed all written and oral information presented to them by County staff and the public at the public hearing; and

**WHEREAS**, the Planning Commission finds the layout and intensity of the activity and construction proposed under the use permit consistent with the Agriculture (A) land use designation currently in effect for the property under the General Plan Land Use Element; and

**WHEREAS**, the Planning Commission of the County of San Benito, in its independent judgment, regards the proposed activity as qualifying for an exemption from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Class 3 of Categorical Exemptions (California Code of Regulations §15303, New Construction or Conversion of Small Structures), provided compliance with conditions of approval; and

**WHEREAS**, at the conclusion of the public testimony, the Planning Commission closed the public hearing, deliberated, and considered the merits of the proposal.

**NOW THEREFORE BE IT RESOLVED** that based on the evidence in the record, the Planning Commission of the County of San Benito hereby finds the following:

**California Environmental Quality Act (CEQA) Finding:**

**Finding:** Pursuant to San Benito County Local Guidelines for the California Environmental Quality Act, and following the Planning Commission’s consideration of comments received during the public review process prior to approving the project, this project qualifies for an exemption from CEQA under State CEQA Guidelines Class 3 of Categorical Exemptions (California Code of Regulations §15303, New Construction or Conversion of Small Structures).

*Evidence:* Class 3 of Categorical Exemptions considers “[w]ater main, sewage, electrical, gas, and other utility extensions, including street improvements, of reasonable length to serve such construction” to have an insignificant effect on the environment. The tower site would be located 499 feet from State Route 156, which is not designated as a scenic highway at the local or State level, although it is eligible for State status. The southeast quarter of the subject property, where the tower would stand, is currently constructed with a residence and multiple buildings use for activities including agricultural packing, with the remainder of the property covered by orchard trees. The nearest similar tower is 2½ miles away. In both *Aptos Residents Association v. County of Santa Cruz* and *Don’t Cell Our Parks v. City of San Diego* the use of categorical exemption Section §15303(d) was sustained by the court for cell towers as the projects did not pose cumulative impacts, and unusual circumstances did not apply. The proposed use would not exceed the limits stated in State CEQA Guidelines §15303 nor qualify for State CEQA Guidelines §15300.2’s exceptions to Categorical Exemptions.

**BE IT FURTHER RESOLVED** by the Planning Commission of the County of San Benito that it hereby finds as follows:

## Use Permit Findings:

**Finding 1:** That the proposed use is properly located in relation to the General Plan, and the community as a whole and to other land uses, transportation, and service facilities in the vicinity.

*Evidence:* The tower would at first be used for omnidirectional antennas serving truck traffic including that along the interregional traffic corridor of State Route 156 and other local truck traffic, such as that serving agriculture. Additional use could then follow for wireless telephone and broadband internet service via co-location, serving area residents and industry including agriculture.

General Plan Goal PFS-9 instructs that the County “facilitate the orderly and appropriate development and expansion of telecommunications facilities,” and General Plan policies associated with the goal further support the presence of these facilities. In addition, the site’s General Plan Land Use Element designation of Agriculture (A) “allows agricultural support uses,” of which this telecommunications facility can be considered for its service to the residents and agriculturalists of the surrounding area. The site is zoned Agricultural Productive (AP); San Benito County Code §25.07.022 allows (by reference to §25.07.005) “[m]icrowave, radio and television transmission and/or relay structures” in an AP zone with a conditional use permit.

The two closest similar facilities are 2½ miles to the northeast and 3½ miles to the west but may be of limited function to the subject property’s vicinity because of terrain features and distance. In satisfaction of Policy PFS-9.6, the tower would provide ample space for co-location by additional carriers, reducing need for additional towers in the area. The future antennas would also potentially expand rural broadband access per Policy PFS-9.10. The proposed use would not generate substantial traffic affecting transportation systems in the vicinity beyond maintenance personnel. The project would allow existing use in the area to continue as before, including the agricultural support activity directly neighboring the tower site on the same property.

**Finding 2:** That the proposed use, if it complies with the conditions upon which approval is made contingent, will not adversely affect other properties in the vicinity or cause any damage, hazard or nuisance to persons or property.

*Evidence:* The facility’s location satisfies the requirement for 1,500 feet of setback from schools, and 500 feet of setback would be maintained from all existing off-site residences, with the project site and its residence subject to a deed restriction regarding issues of locating a wireless facility on-site. The agricultural setting is low in residential density, with five residences located within a quarter-mile of the tower site. The tower would be visible to surroundings but set among existing buildings that are similarly utilitarian in their unadorned appearance and also in their function, providing agricultural support with agricultural product packing and truck loading. County departments and responsible agencies have reviewed the application and recommended conditions of project approval to address possible effects on the vicinity and the overall County general public and to prevent hazard or nuisance to persons and property. Activity beyond the scope of the proposed use as approved by the County shall require further permit review.

**BE IT FURTHER RESOLVED** by the Planning Commission of the County of San Benito that, based on the foregoing findings and evidence in the record, the Planning Commission hereby approves the conditional use permit subject to the conditions of approval found in **Exhibit A**.

**PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE COUNTY OF SAN BENITO THIS 17<sup>TH</sup> DAY OF JUNE 2020 BY THE FOLLOWING VOTE:**

AYES: Eglan, Gibson, Eggers, Navarro, Rodriguez

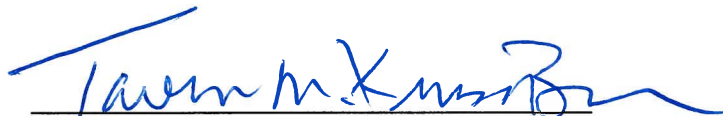
NOES: none

ABSENT: none

ABSTAIN: none

  
\_\_\_\_\_  
Valerie Eglan, Chair  
San Benito County Planning Commission

ATTEST:

  
\_\_\_\_\_  
Taven M. Kinison Brown, Principal Planner  
Resource Management Agency of San Benito County

## Exhibit A to Resolution

### Conditions of Approval:

#### Planning:

- 1. Indemnification:** APPLICANT shall defend, indemnify, and hold San Benito County, its agents, officers, and/or employees (hereinafter "COUNTY") free and harmless from any and all suits, fees, claims, demands, causes of action, proceedings (hereinafter collectively referred to as "Legal Action"), costs, losses, damages, liabilities and expenses (including, but not limited to, an award of attorneys' fees, expert witness fees, and court costs) incurred by COUNTY arising (directly or indirectly) or resulting from the review, processing, consideration, or approval of APPLICANT'S Project or action taken by COUNTY thereon, including Legal Actions based on the negligence of COUNTY. APPLICANT will reimburse COUNTY for any damages, costs, or fees awarded pursuant to any settlement, default judgment, or other judgment taken against the County, whether the result of Applicant's decision not to defend Legal Action or otherwise. COUNTY retains its discretion to direct counsel regarding whether to defend, settle, appeal, or take other action regarding any Legal Action. APPLICANT shall defend COUNTY'S actions with competent legal counsel of APPLICANT's choice without charge to COUNTY, subject to COUNTY approval, which shall not be unreasonably withheld. Nothing contained in the foregoing, however, shall be construed to limit the discretion of COUNTY, in the interest of the public welfare, to settle, defend, or appeal, or to decline settlement or to terminate or forego defense or appeal of a Legal Action. Furthermore, in no event shall COUNTY have any obligation or liability to APPLICANT in connection with COUNTY'S defense or prosecution of litigation related to the Project (including, but not limited to, the outcome thereof) or in the event COUNTY elects not to prosecute a case or defend litigation brought against it. If either COUNTY or APPLICANT determines in good faith that common counsel presents a bona fide conflict of interest, then COUNTY may employ separate counsel to represent or defend the COUNTY, and APPLICANT shall pay the reasonable attorneys' fees and costs of such counsel within thirty (30) days of receiving an itemized billing statement or statements. [Planning]
- 2. Successors in Interest:** The conditions of approval are binding on all successors in interest of Applicant, whether succession is by agreement, operation of law, or other means, including but not limited to all future owners utilizing this use permit. [Planning]
- 3. Conformity with Plan:** The development and use of the site shall conform substantially to the proposed project description, site plan (as illustrated in **Exhibit B**), and conditions of approval as approved by the Planning Commission. Any increase in the nature or intensity of land use on the site beyond that already analyzed shall be subject to further Planning review and approval. Approved plans and specifications shall not be changed, modified or altered without written authorization from the Resource Management Agency. All work shall be in accordance with the approved plans and with San Benito County Code. [Planning]
- 4. Compliance Documentation:** Prior to any approved use permit activity, the applicant shall submit a summary response in writing to these conditions of approval documenting compliance with each condition, including dates of compliance and referencing documents or other evidence of compliance. [Planning]
- 5. Approved Conditional Uses and Activities:** The property owner proposes a use permit as presented and described in the record before the Planning Commission at its regular meeting of June 17, 2020, with said use and activity involving installation of a new wireless telecommunications facility composed of a 95-foot-tall tower on a 2,400-square-foot lease area (60 feet by 40 feet) to support two omnidirectional antennas for transportations communications, two microwave dishes, and three future wireless telecommunications carriers.

6. **Cultural Resources:** A note shall be placed on the project improvement plan to state that that any property owner who, at any time in the preparation for or process of excavation or otherwise disturbing the ground, discovers any human remains of any age, or any significant archaeological artifact or other evidence of an archeological site shall
  - a. cease and desist from further excavation and disturbances within two hundred feet of the discovery or in any nearby area reasonably suspected to overlie adjacent remains;
  - b. arrange for staking completely around the area of discovery by visible stakes no more than ten feet apart, forming a circle having a radius of no less than one hundred feet from the point of discovery, provided that such staking need not take place on adjoining property unless the owner of the adjoining property authorizes such staking and that said staking not include flags or other devices which may attract vandals;
  - c. notify the County Sheriff–Coroner and County Resource Management Agency of the discovery if human and/or questionable remains have been discovered; and
  - d. grant, subject to due legal process, to all duly authorized representatives of the Coroner and the Resource Management Agency permission to enter onto the property and to take all actions consistent with Chapter 19.05 of San Benito County Code, with State Health and Human Safety Code §7050.5, and with State Government Code Title 3 Division 2 Part 3 Chapter 10 (§27460 *et seq.*). [Planning]
7. **Notice of Exemption (Fish & Game Fees):** The applicant/owner shall be required to file a Notice of Exemption for the project. The notice shall be provided by the County Planning Department and filed with the County Clerk within five (5) days of approval of the project. An administrative fee of \$50.<sup>00</sup> shall be submitted to the Resource Management Agency for the filing of the notice. [Planning/CDFW]
8. **Exterior Color:** Non-reflective colors similar to the surrounding trees and land shall be maintained and applied to the exterior of the new structures, antennas, and tower, and the exterior appearance of the structures shall be maintained at all times. [Planning]
9. **Lighting:** The exterior equipment building lighting shall be installed with a manual on/off switch and shall only be lighted while maintenance personnel are working at the site; at all other times any exterior lights shall be switched off except for those necessary for public safety, and all lighting shall comply with County Ordinance 748 (Development Lighting Regulations). [Planning]
10. **Colocation:** The applicant shall allow other wireless carriers to colocate antennas on the monopole where technologically and economically feasible and shall provide a written commitment to the County Resource Management Agency Director to this effect.
11. **Equipment Removal:** The applicant shall remove the equipment and equipment shelter no later than six (6) months after operation of the communication facility ceases. [Planning]

**Fire:**

12. **Fire Code:** The project, including driveway details, shall meet the standards set forth in the latest adopted editions of the California Fire Code, California Building Code, San Benito County Ordinances 822 and 823, Public Resources Codes 4290 and 4291 and all other related codes as they apply to a project of this type and size. [Fire, Public Works]

**Division of Environmental Health:**

13. **Hazardous Materials:** If any hazardous materials are to be stored on the site of the proposed project, a Hazardous Materials Business Plan shall be completed and submitted to the County Division of Environmental Health. [Environmental Health]

**Public Works:**

- 14. **Encroachment Permit:** The applicant shall obtain an Encroachment Permit for any work performed within the public road right-of-way.
- 15. **Agreement with All Conditions of Approval:** Prior to or upon approval by the Planning Commission, Applicant shall sign the statement below certifying that Applicant is in agreement with all conditions of approval. [Planning]

I certify that I understand and agree to comply with all Conditions of Approval imposed by the Planning Commission, or Board of Supervisors as applicable, on this Permit.

Applicant Signature: \_\_\_\_\_

Date: \_\_\_\_\_

- 16. **Deed Restriction:** Prior to issuance of a building permit, the applicant shall record a deed restriction stating that the property owner/developer is aware of potential issues regarding the placement of a wireless communication facility within 500 feet of the single-family dwelling. [Planning]









DIAMOND ENGINEERING SERVICES

4255 PARK ROAD  
BENICIA, CA 94510



HORIZON  
TOWER, LLC

117 Town & Country Drive, Suite A  
Danville, CA 94518  
Phone: 925-314-1113  
Fax: 925-314-1114

EAST & NORTH ELEVATIONS

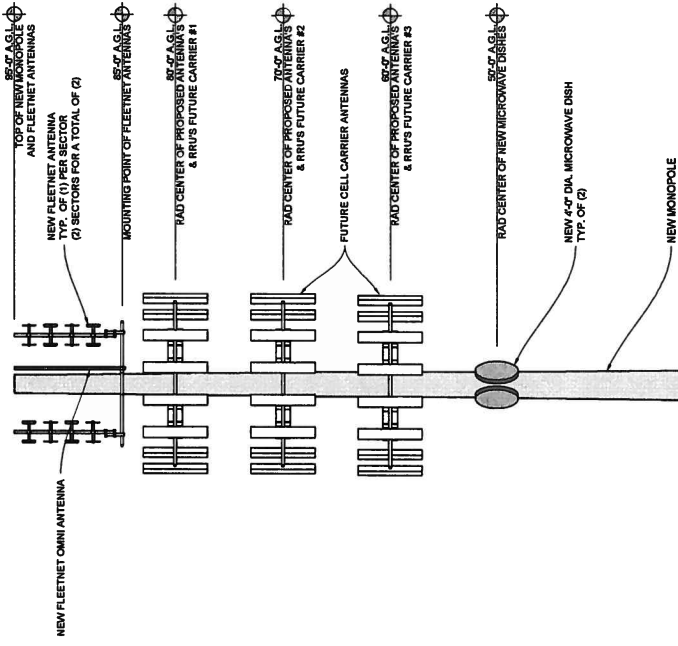
Horizon Tower  
CA4072 - Flint Rd.  
10 Flint Rd.  
Hollister, CA 95023

REVISIONS	
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05-31-18	

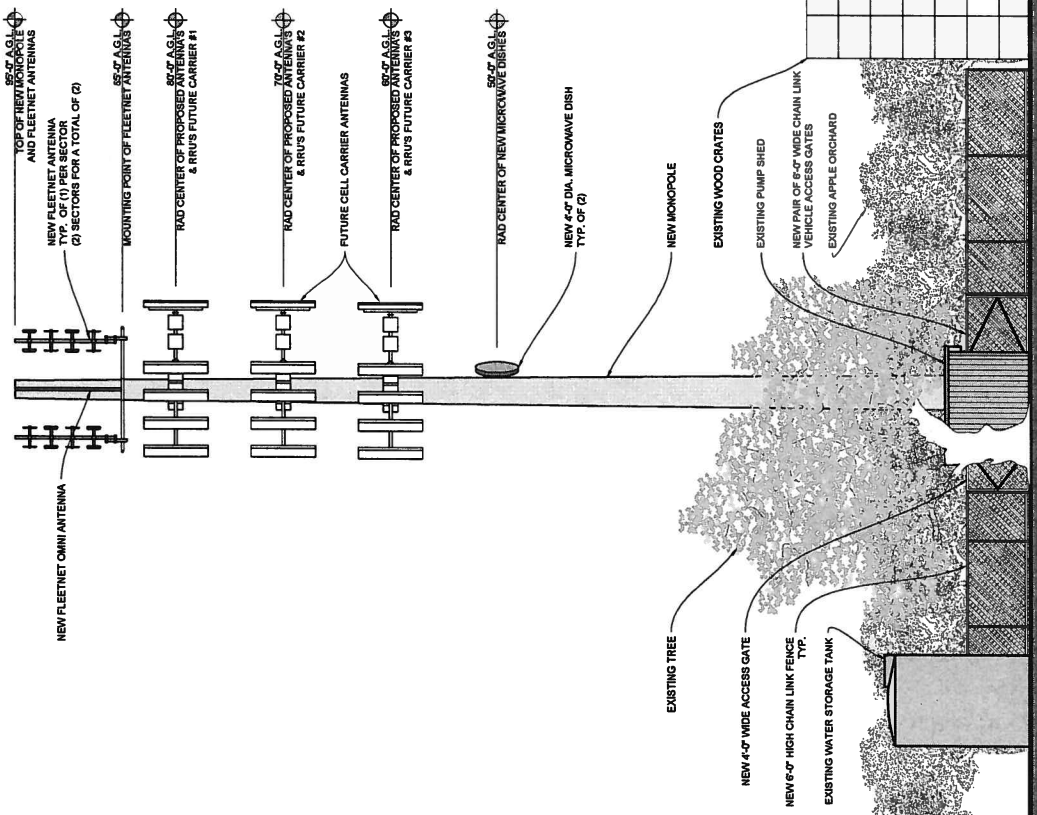
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Drawn/Check By: LBS / EKU

A3

NOTE:  
1. MONOPOLE AND FOUNDATION TO BE STRUCTURALLY DESIGNED TO CARRY (4) CARRIERS, EACH WITH UP TO (4) SECTORS OF (3) ANTENNAS AND (3) RRUS, (12) ANTENNAS TOTAL AND (12) RRUS TOTAL EACH CARRIER.



NOTE:  
1. MONOPOLE AND FOUNDATION TO BE STRUCTURALLY DESIGNED TO CARRY (4) CARRIERS, EACH WITH UP TO (4) SECTORS OF (3) ANTENNAS AND (3) RRUS, (12) ANTENNAS TOTAL AND (12) RRUS TOTAL EACH CARRIER.



1 NORTH ELEVATION

SCALE: 3/16" = 1'-0"

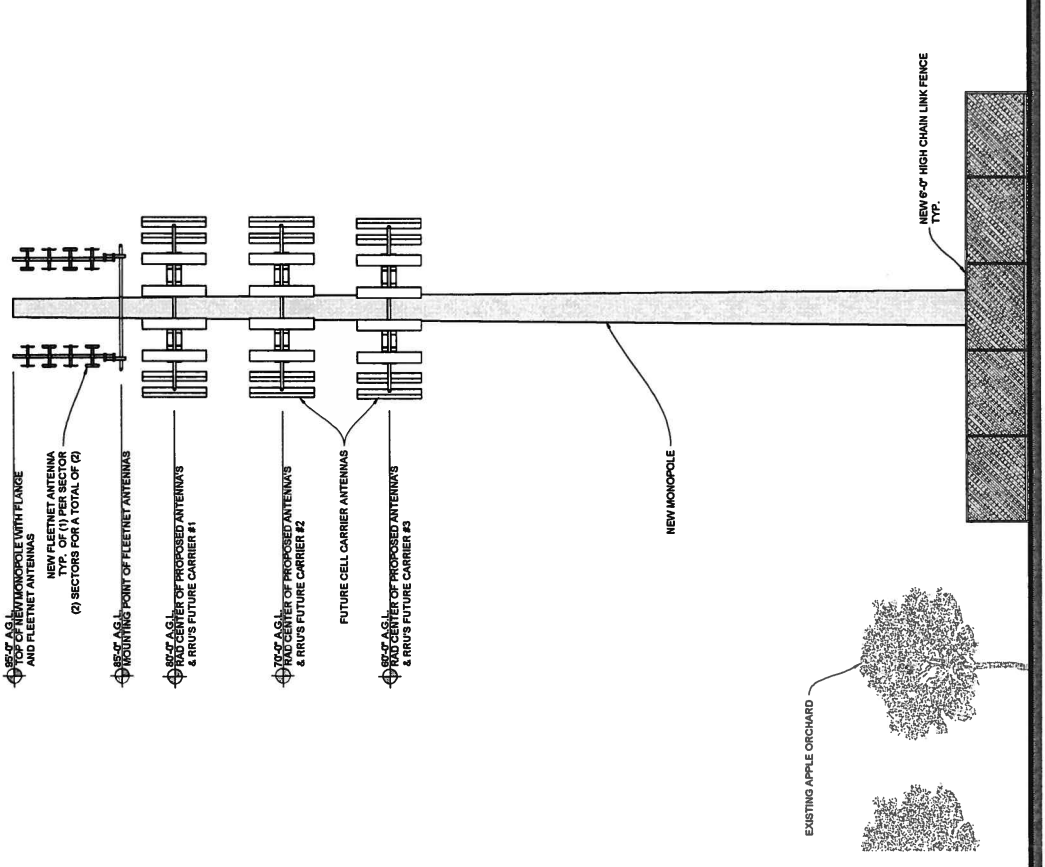
2 EAST ELEVATION

SCALE: 1/8" = 1'-0"

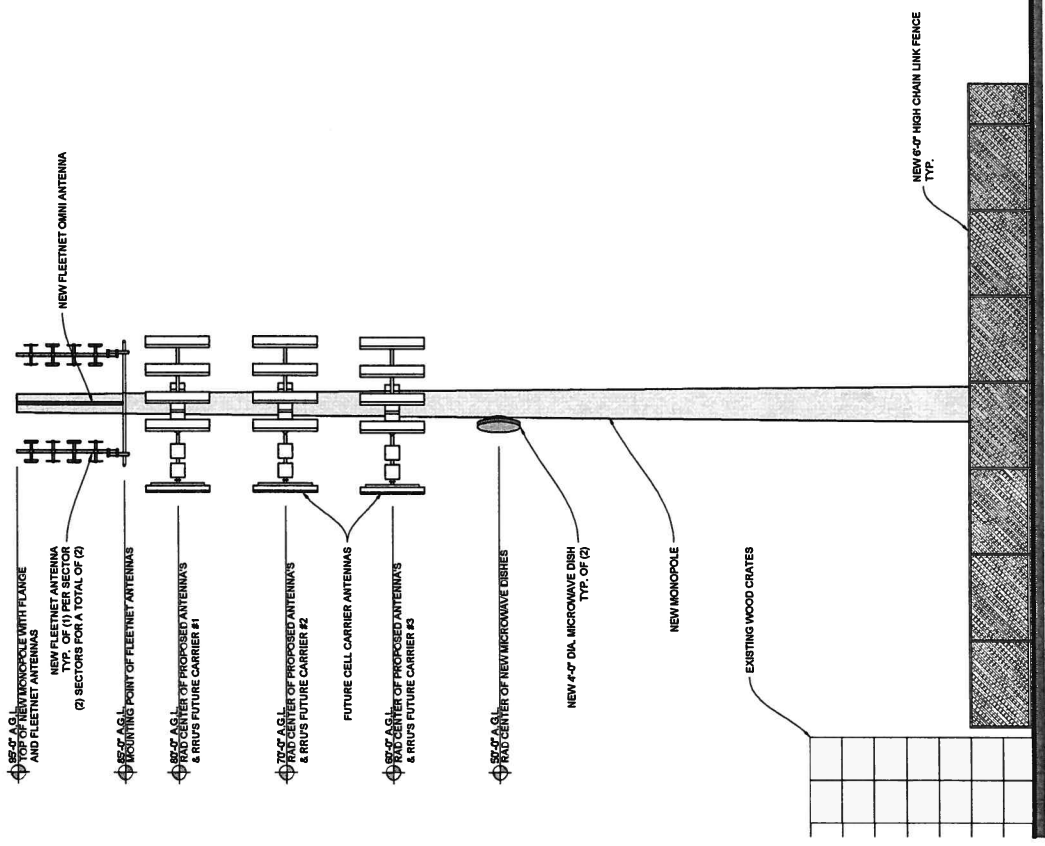
No.	DESCRIPTION	DATE
0	90% ZDPs FOR REVIEW	05-28-18
1	100% ZDPs BASELINE	05-31-18

Drawn/Checked By:  
 LBS / EJU  
 Job No.:  
 HT-8004

**NOTE:**  
 1. MONOPOLE AND FOUNDATION TO BE STRUCTURALLY DESIGNED TO CARRY (4) CARRIERS, EACH WITH UP TO (4) SECTORS OF (3) ANTENNAS AND (2) RRUS, (12) ANTENNAS TOTAL AND (12) RRUS TOTAL EACH CARRIER.



**NOTE:**  
 1. MONOPOLE AND FOUNDATION TO BE STRUCTURALLY DESIGNED TO CARRY (4) CARRIERS, EACH WITH UP TO (4) SECTORS OF (3) ANTENNAS AND (2) RRUS, (12) ANTENNAS TOTAL AND (12) RRUS TOTAL EACH CARRIER.



**1 WEST ELEVATION**  
 SCALE: 1/8" = 1'-0"

**2 SOUTH ELEVATION**  
 SCALE: 1/8" = 1'-0"