

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

**A RESOLUTION OF THE SAN  
BENITO COUNTY PLANNING  
COMMISSION APPROVING  
PLN180014, A USE PERMIT FOR A  
FAUX MONOPINE WIRELESS  
TELECOMMUNICATIONS  
FACILITY, AT 111/113 BEST ROAD,  
APN 025-190-032 & 025-190-033.**

**Resolution No. 2018-0X**

**WHEREAS**, SAC AE Design Group Inc. (SAC Wireless) & Tracy & Michael Nino filed an application on April 12, 2018, to modify the placement and configuration of an approved wireless communications facility (County File #PLN180014) on property under their ownership at 111/113 Best Road; and

**WHEREAS**, County staff received the Use Permit proposal (File # PLN180014) and distributed this plan to responsible County and peer agencies for review and comment; and

**WHEREAS**, the subject parcel is on the east side of Best Road, approximately 2,500 feet northeast of Airline Highway, 1,600 feet due north of the Best Road/Hwy 25 intersection, San Benito County, CA (one parcel with 2 APNs: 025-190-032, 025-190-033) and is approximately 240 acres in area; and

**WHEREAS**, this Use Permit PLN180014 proposes to construct a 70'-foot tall wireless communications facility approximately 50' feet from the Best Road right-of-way as an alternative to the approved faux water tower wireless facility approved to be located approximately 1,550 feet to the east; and

**WHEREAS**, a new site search was undertaken in response to an adverse effect finding to the California red-legged frog (CRLS; threatened) and the California tiger salamander (CTS; endangered), to US Fish & Wildlife Service (USFWS) under NEPA consultation. The new location is proposed to avoid an adverse impact on these species, and to minimize impact to sensitive habitat; and

**WHEREAS**, the new site was determined to eliminate environmental impacts to identified protected species and habitat; and

**WHEREAS**, no unusual circumstances, features of the land, or unexpected issues have arisen with the newly proposed location; and

**WHEREAS**, the subject parcel has a General Plan Designation of RR Residential Rural and a Zoning Designation of AP Agricultural Productive; and

**WHEREAS**, the County assessed the potential for any substantial effect on the environment for the project consistent with the requirements of the California Environmental Quality Act (CEQA); and

**WHEREAS**, on December 5, 2018, the Planning Commission in considering Use Permit PLN180014 as described herein and in the staff report, 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**, 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 as follows:

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

**Finding:** Pursuant to San Benito County Local Guidelines for the California Environmental Quality Act, this project qualifies for a Categorical Exemption (New Construction or Conversion of Small Structures) under Section 15303(d) (Class 3).

***Evidence:** The proposed use would extend a utility service. Hazardous substances are addressed as a condition of project approval and are limited to a 500-gallon propane tank for an emergency back-up generator. The tower would stand one mile from a highway eligible to become a state scenic highway and create minimal aesthetic change to that highway. The nearest similar tower is one mile away. 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 General Plan Land Use Element designation for the site is Rural Residential (RR), which allows for public utility services supportive to other activities permitted in the land use district. The site's zoning designation for this property is Agricultural Productive (AP), where San Benito County Code §25.07.005(H) allows for "[m]icrowave, radio and television transmission and/or relay structures" in an AP zone with a conditional use permit. The use would not generate substantial traffic affecting transportation systems in the vicinity beyond maintenance personnel. Improved wireless communication will serve and assist the general public, especially in cases of emergency. With the exception of the tower's lease area and any future access road, the proposed use would allow residential, agricultural, and other uses in the area to continue as before with minimal impact. The proposed use would satisfy County Code Chapter 7.11's intent for "orderly development" without detracting from "public health, safety and welfare and the aesthetic quality of the county."<sup>1</sup>*

**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 tower will be visible to surroundings but made aesthetically compatible with the larger landscape by its appearance resembling a pine tree. Ground equipment will be enclosed by opaque fencing, and the view of the structure would also be softened by earth toned materials and nonreflective paint. 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 residences. The installation will be subject to the California Building Code, including any provisions for flooding. 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.*

### **Conditions of Approval**

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. **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: \_\_\_\_\_

4. **Conformity with Plan:** The development and use of the site shall conform substantially to the proposed project description, site plan, 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 Planning Department. All work shall be in accordance with the approved plans and with San Benito County Code. [Planning]
5. **Compliance Documentation:** 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]
6. **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 \$50.00 shall be submitted to the Planning Department for the filing of the notice. [Planning/CDFW]
7. **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]
8. **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]
9. **Colocation:** The applicant shall allow other wireless carriers to colocate antennas on the monopole shall provide a written commitment to the County Resource Management Agency Director, to this effect. prior to the issuance of construction permits, All wireless carriers that colocate antennas shall also use a stealth design, compatible with a pine tree appearance. [Planning]



10. Prior to issuance of any permits for new telecommunications facilities, the applicant shall provide an irrevocable letter of credit or other reasonable form of security satisfactory to county counsel for the removal of the facility in the event that its use is abandoned or its use permit is terminated. The amount of the bond is to be determined by the nature of the project. (7.11.004 (G))
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]
12. **Use Permit Renewal:** Renewal of the use permit shall be required every 5 years from the date of approval. [Planning]
13. **Cultural Resources:** If, at any time in the preparation for or process of excavation or otherwise disturbing the ground, discovery occurs of any human remains of any age, or any significant artifact or other evidence of an archeological site, the applicant or builder 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 not less than one hundred feet from the point of discovery; provided, however, that such staking need not take place on adjoining property unless the owner of the adjoining property authorizes such staking. Said staking shall not include flags or other devices which may attract vandals.
  - c. Notify the Sheriff-Coroner of the discovery if human and/or questionable remains have been discovered. The Resource Management Agency Director shall also be notified.
  - d. Subject to the legal process, grant all duly authorized representatives of the Coroner and the Resource Management Agency Director permission to enter onto the property and to take all actions consistent with Chapter 19.05 of the San Benito County Code and consistent with §7050.5 of the Health and Human Safety Code and Chapter 10 (from §27460 on) of Part 3 of Division 2 of Title 3 of the Government Code. [Planning]

**Fire:**

14. **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:**

15. **Hazardous Materials:** The owner is required to complete a Hazardous Materials Business Plan (HMBP) and shall submit the HMBP to the County Division of Environmental Health. [Environmental Health]

**Public Works:**

16. **Encroachment Permit:** The applicant shall obtain an Encroachment Permit for any work done in the right-of-way (ROW).

**PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE COUNTY OF  
SAN BENITO THIS 5<sup>TH</sup> DAY OF DECEMBER 2018 BY THE FOLLOWING VOTE:**

AYES:

NOES:

ABSENT:

ABSTAIN:

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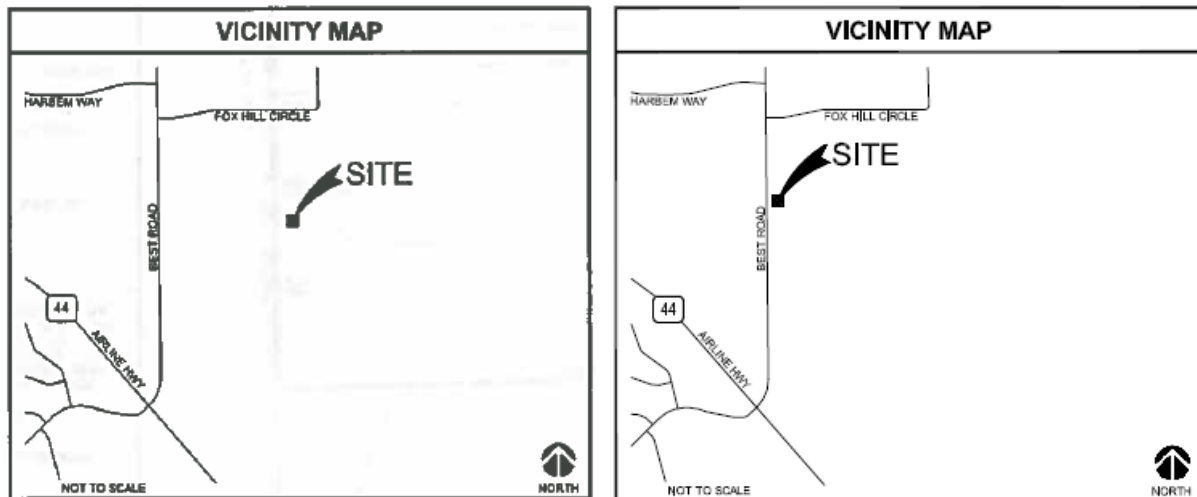
**Mark Tognazzini**, Chair  
San Benito County Planning Commission

***ATTEST:***

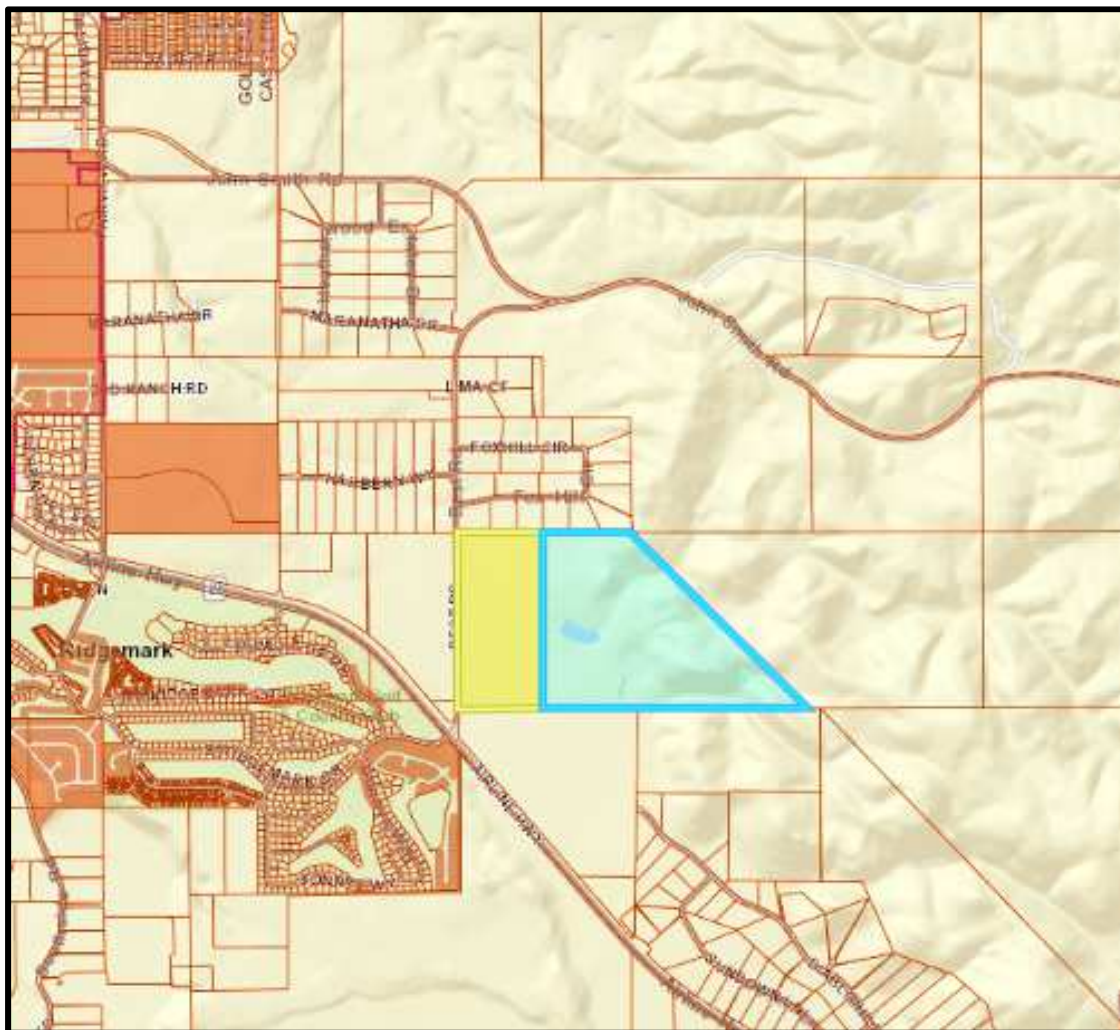
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**Taven M. Kinison Brown**, Principal Planner  
Resource Management Agency San Benito County

## Attachment 1. Vicinity Maps

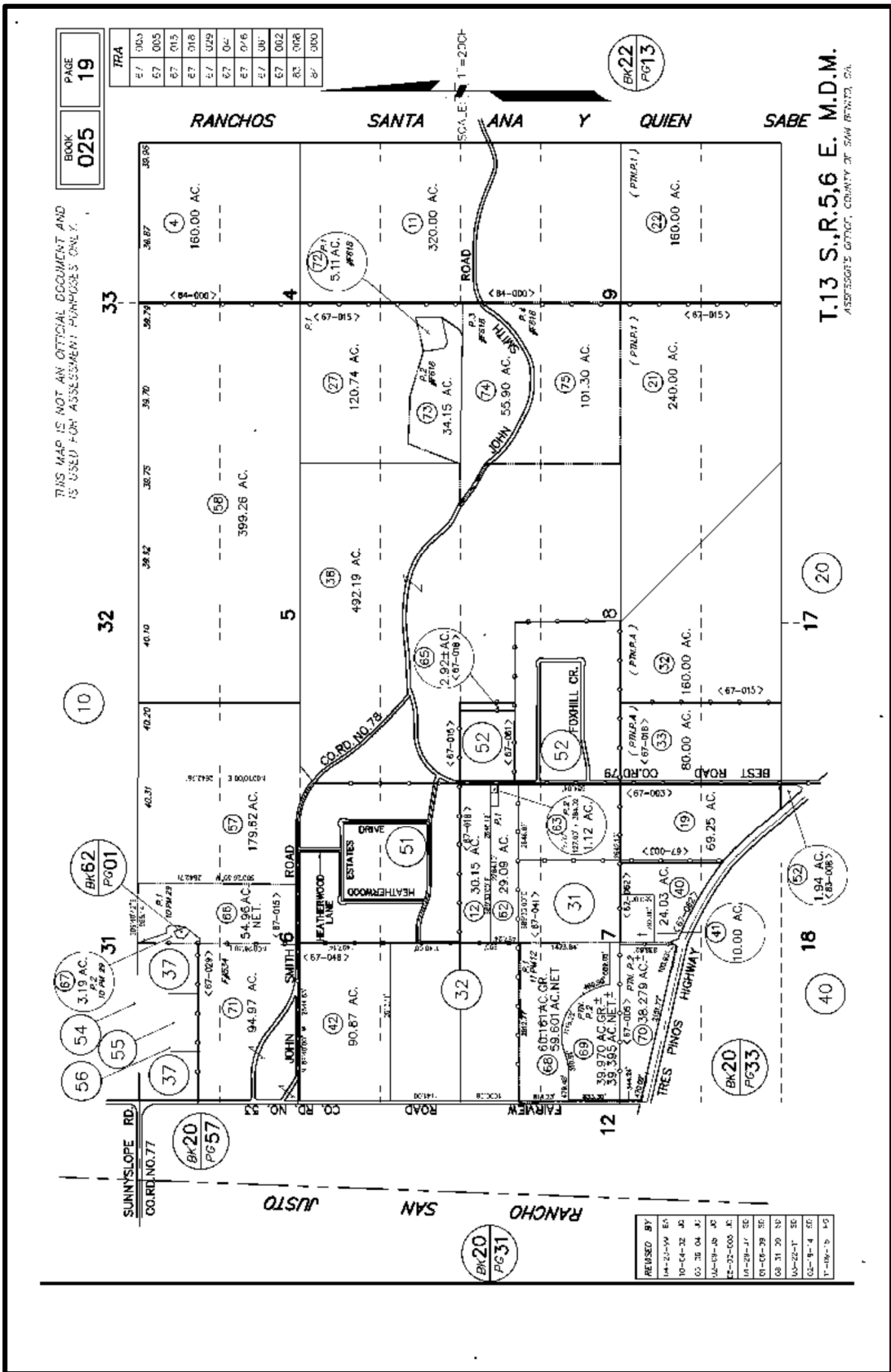


**Old (left) and Proposed (right) Sites**

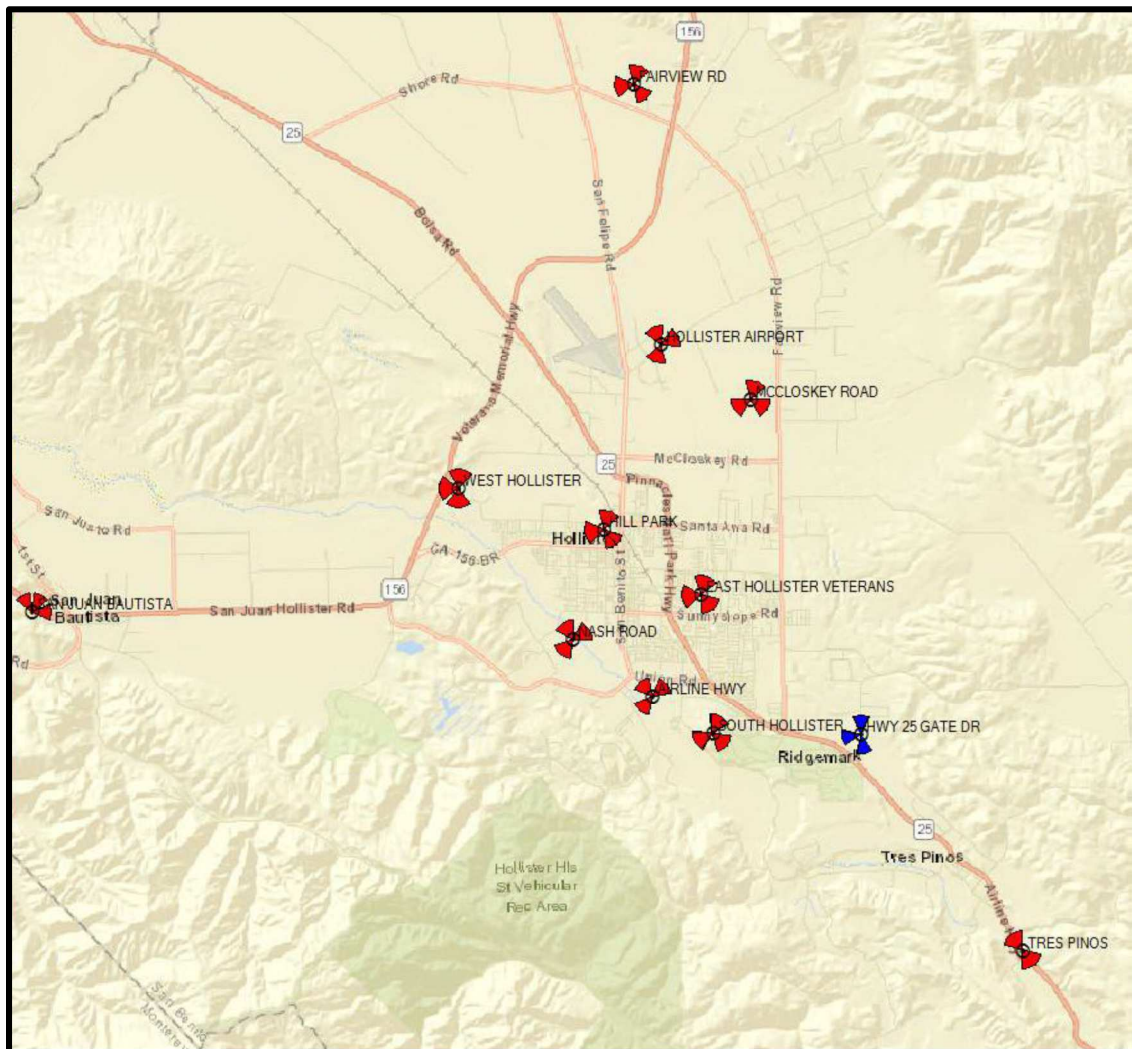


**Vicinity Map. APNs 025-190-032 (right,blue) and 025-190-033 (left, yellow).**

## **Attachment 2. Assessor's Parcel Map**



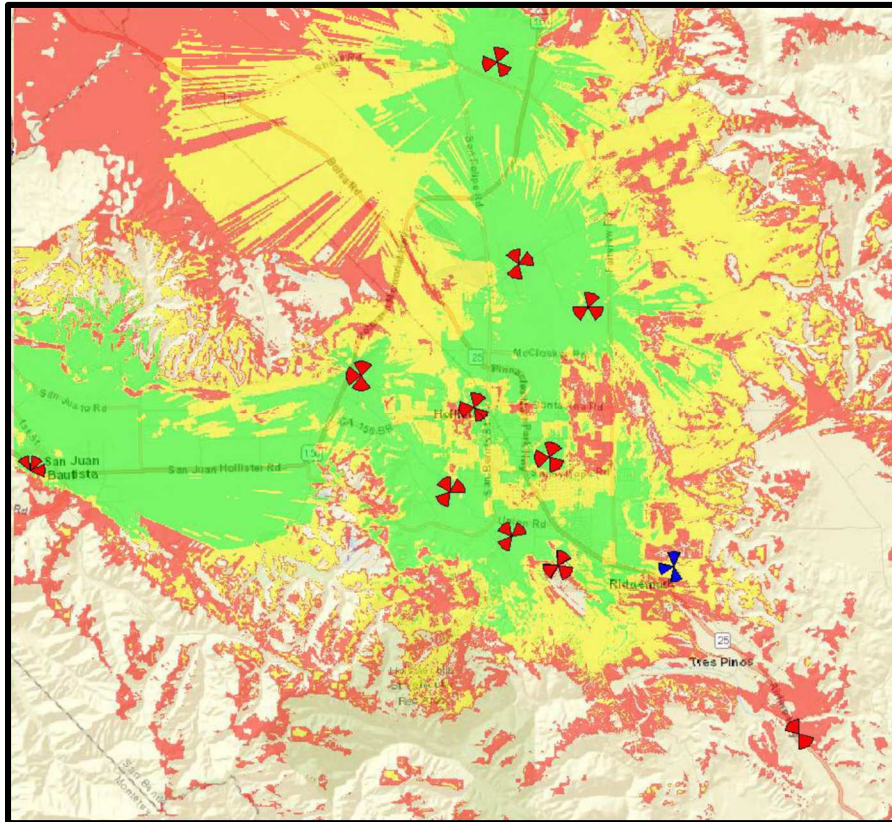
### Attachment 3. Network Facilities Map & Coverage Maps



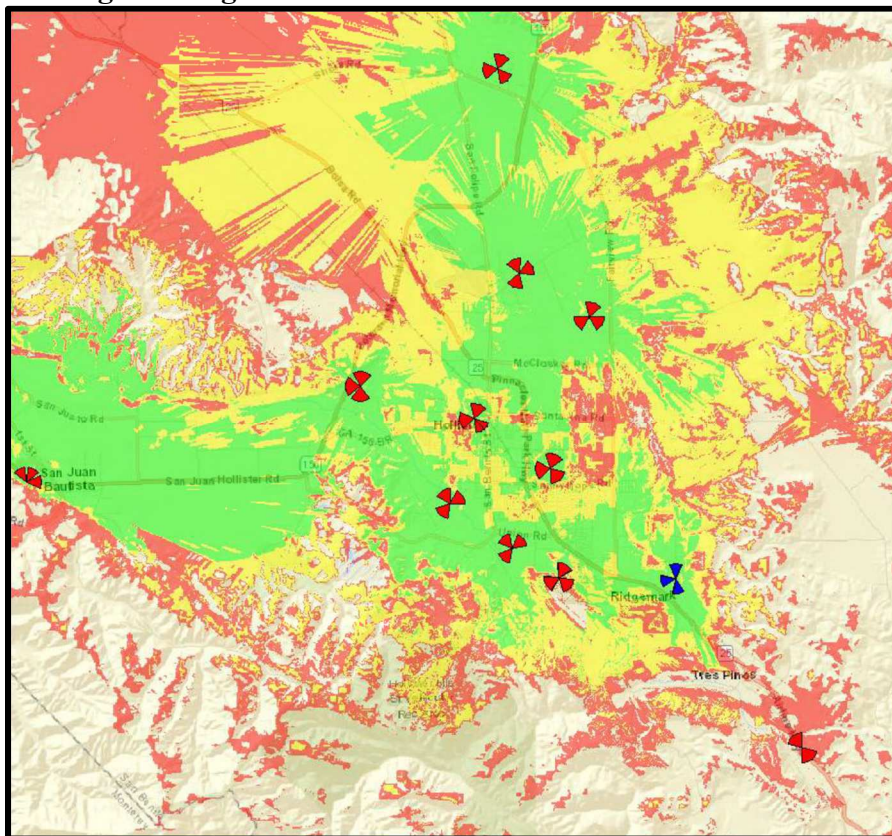
**Existing Facilities (in red), with Proposed Facility (in blue)**



**Attachment 3 (continued). Coverage Maps**



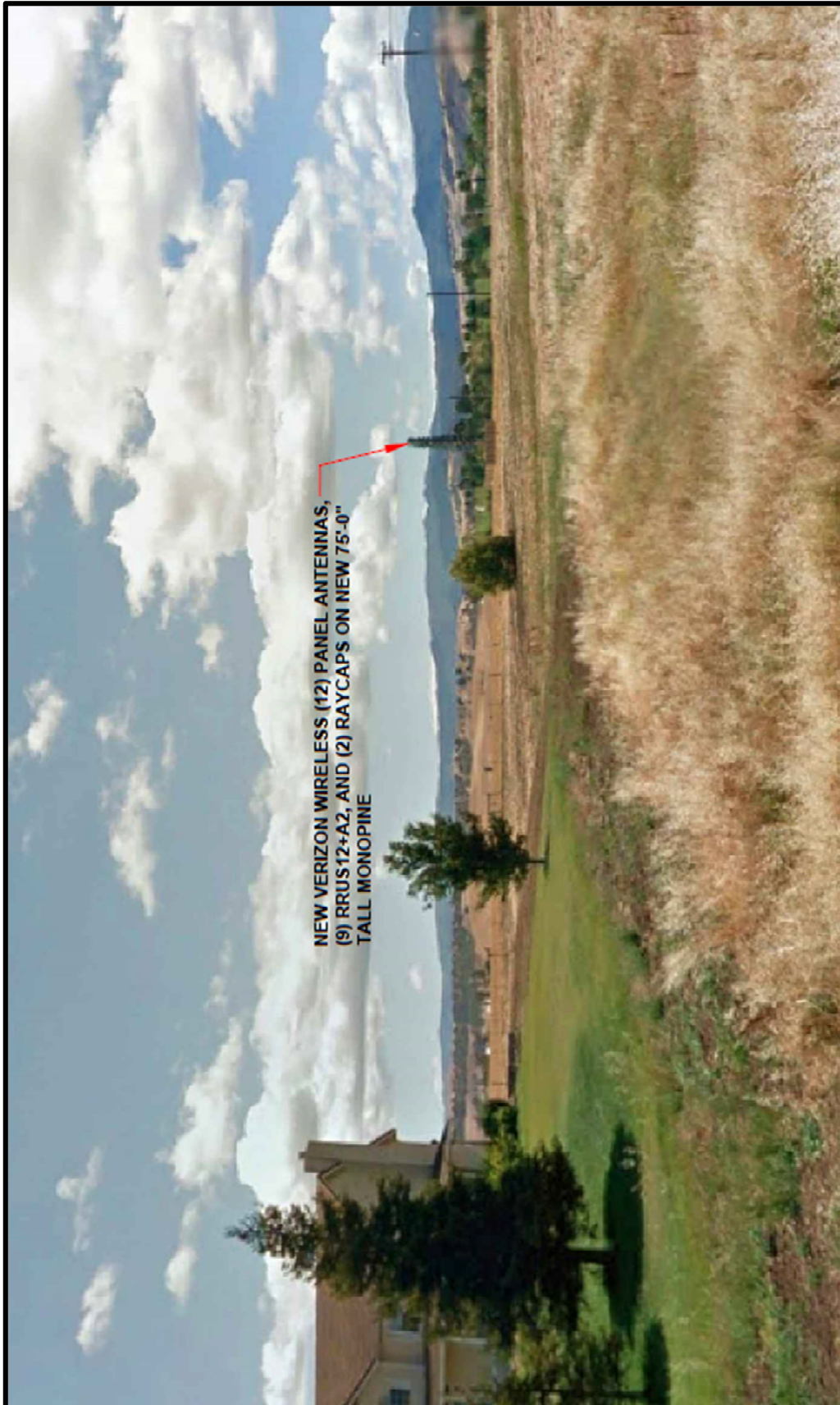
**Existing Coverage**



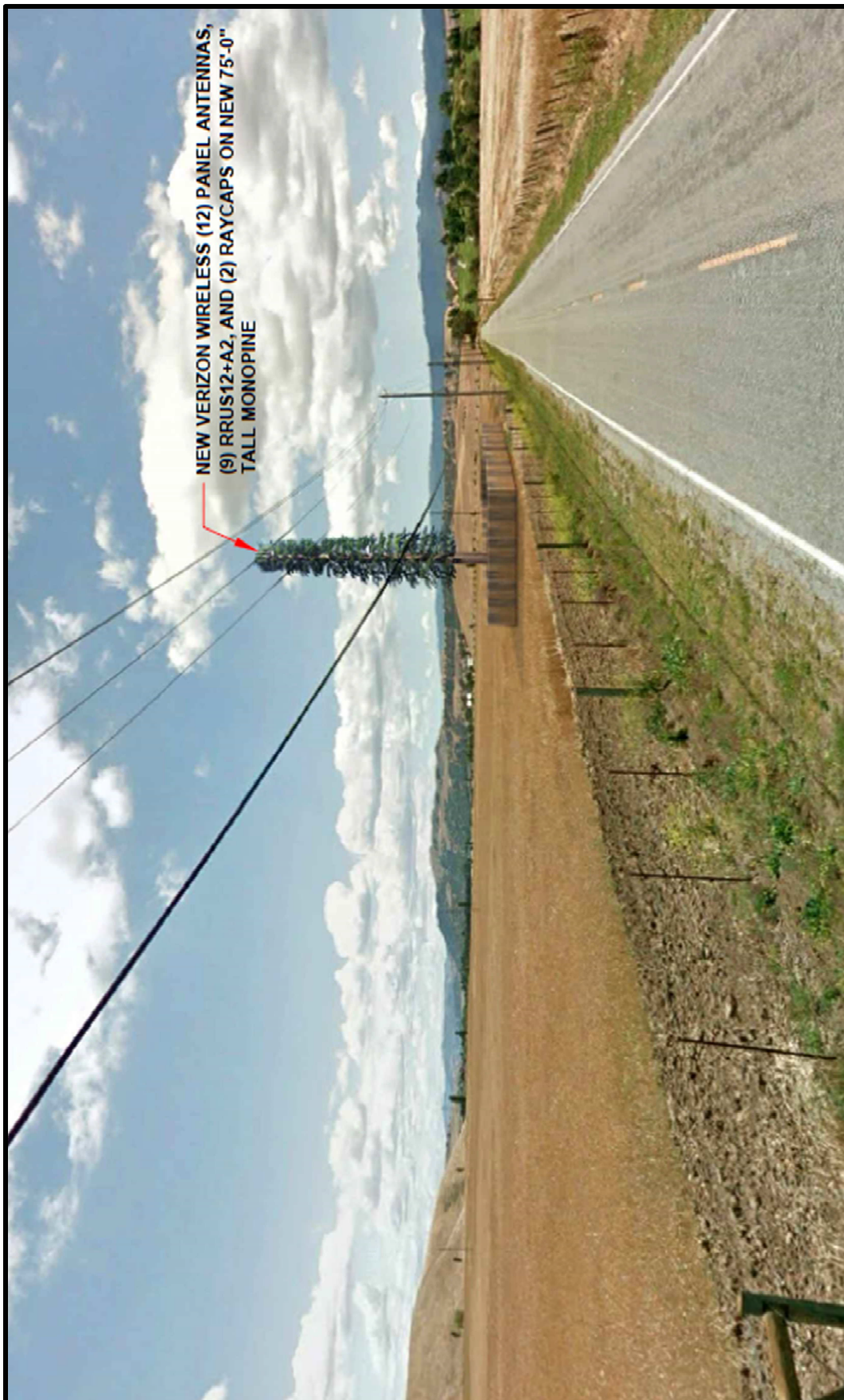
**Proposed Coverage**



#### Attachment 4. Photo Simulations

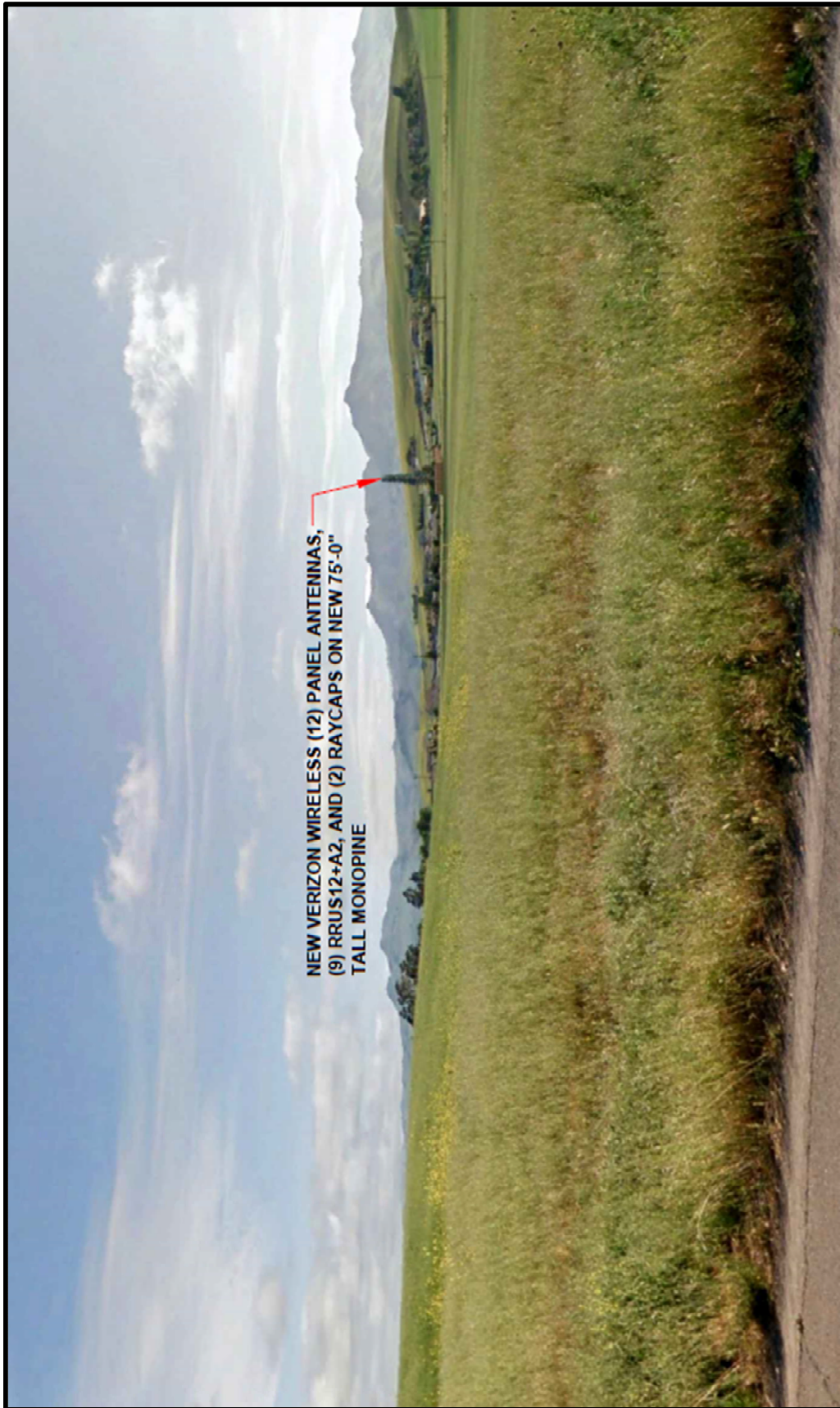


**View from Fox Hill Circle**



View from Best Road





View from Airline Hwy 25