PZBA16-00022 1513 Sunbowl Drive Romano & Associates, LLC
Applicant requests a Variance under Section 2.16.030 from Section 20.10.455.E.1.g.i, Camouflage and Screening.

The request is for a Variance from the camouflaging requirements in the El Paso City Code, Section 20.10.455.E.1.g.i, Camouflage and Screening, for a proposed 65' ground-mounted personal wireless service facility (PWSF) in a C-2 (Commercial), C-2/H (Commercial/Historic) zone district.

This would permit a PWSF to remain un-camouflaged as defined in 20.10.455.E.1.g.i:

i. All Ground-Mounted PWSF Shall be Camouflaged. Camouflaging is a method of disguising or concealing the appearance of an object by changing its usual color, modifying its shape, or locating it in a structure that complements the natural setting, existing and surrounding structures. In the context of this section, camouflaging includes, but is not limited to, making PWSF antenna support structures resemble man-made trees, locating PWSF antenna support structures in bell steeples or clock towers, or on similar alternative-design mounting structures

BACKGROUND
The applicant is requesting the Variance to waive the camouflage requirements for a proposed PWSF and allow for the structure to resemble a 65' light fixture with 14' diameter canister to conceal the antennae above. The proposed facility is outside of the historical designation area, but the applicant has received comments of preference from the Texas Historical Commission for such design. Planning has received four emails in opposition to the variance request.

STAFF RECOMMENDATION
Staff recommends denial of the Variance request as there are no special conditions, neither topographic nor odd shape of the lot, existing on the subject property which prevents camouflaging. Also, many options have been provided to the applicant which may be more compatible to the surrounding area, more in line with the intent of the ordinance, and may provide for better concealment of the proposed facility.

The Zoning Board of Adjustment is empowered under Section 2.16.030 to:

"Authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done."

The following questions should be carefully considered in order to grant a variance:

1. Is the variance consistent with public interest?

2. Is the need for the variance due to special conditions?

3. Would a literal enforcement of the ordinance create an unnecessary hardship?

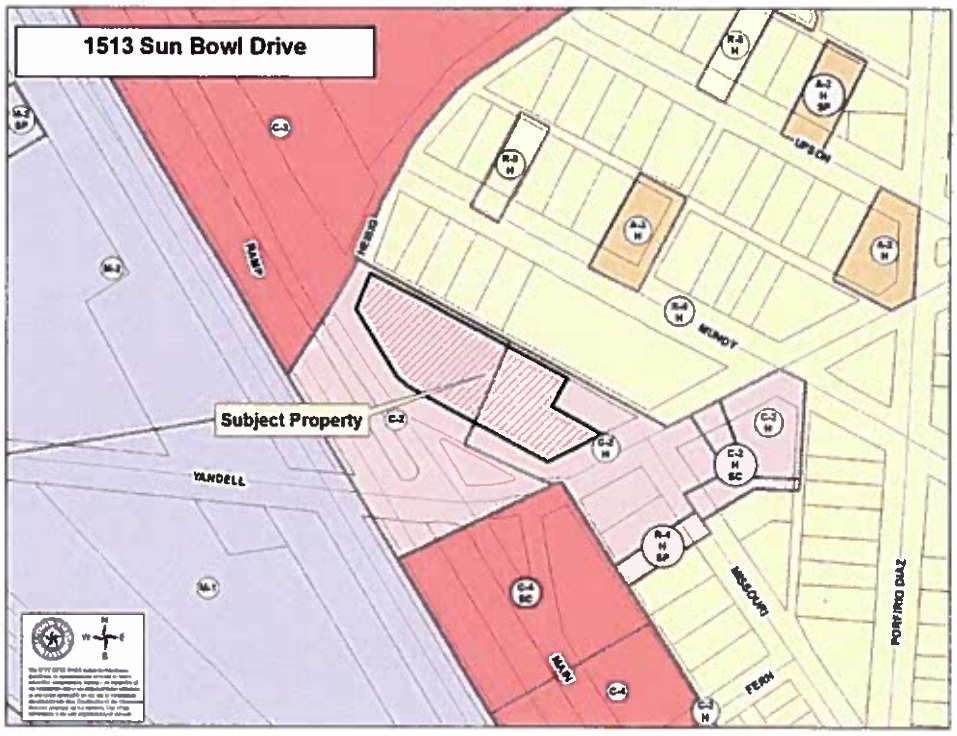
4. Would the spirit of the ordinance be observed and substantial justice done if the variance is approved?

Definition of Unnecessary Hardship, Section 20.02.1128

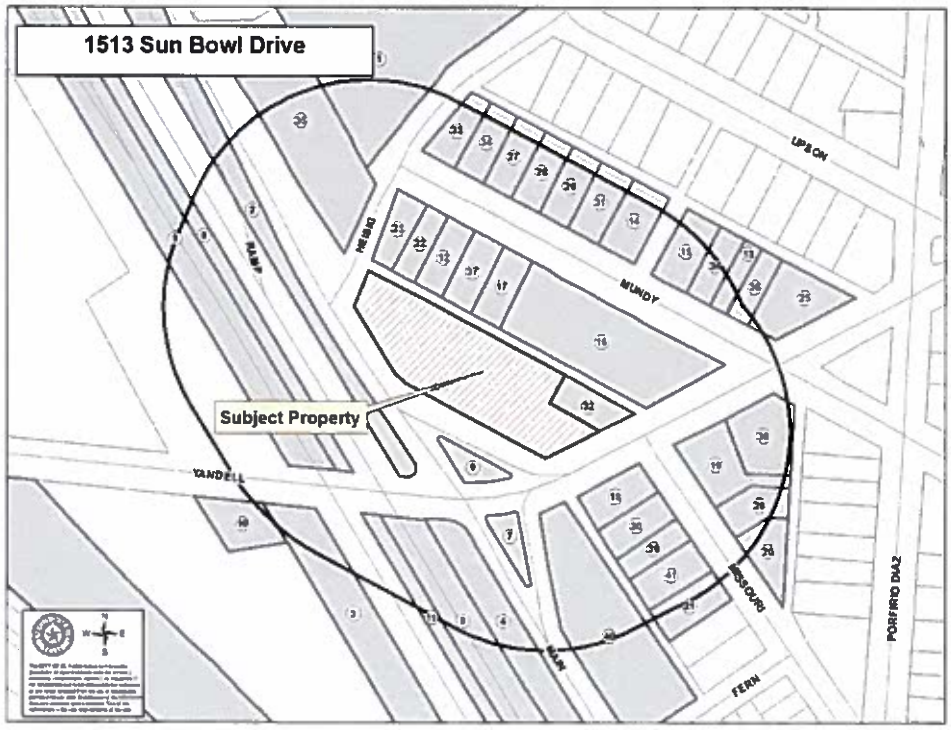
"Unnecessary hardship" means a hardship by reason of exceptional shape of a lot, exceptional topographic conditions, or other exceptional physical conditions of a parcel of land. Unnecessary hardship shall not include personal or financial hardship or any other hardship that is self-imposed.

ITEM #3

ZONING MAP

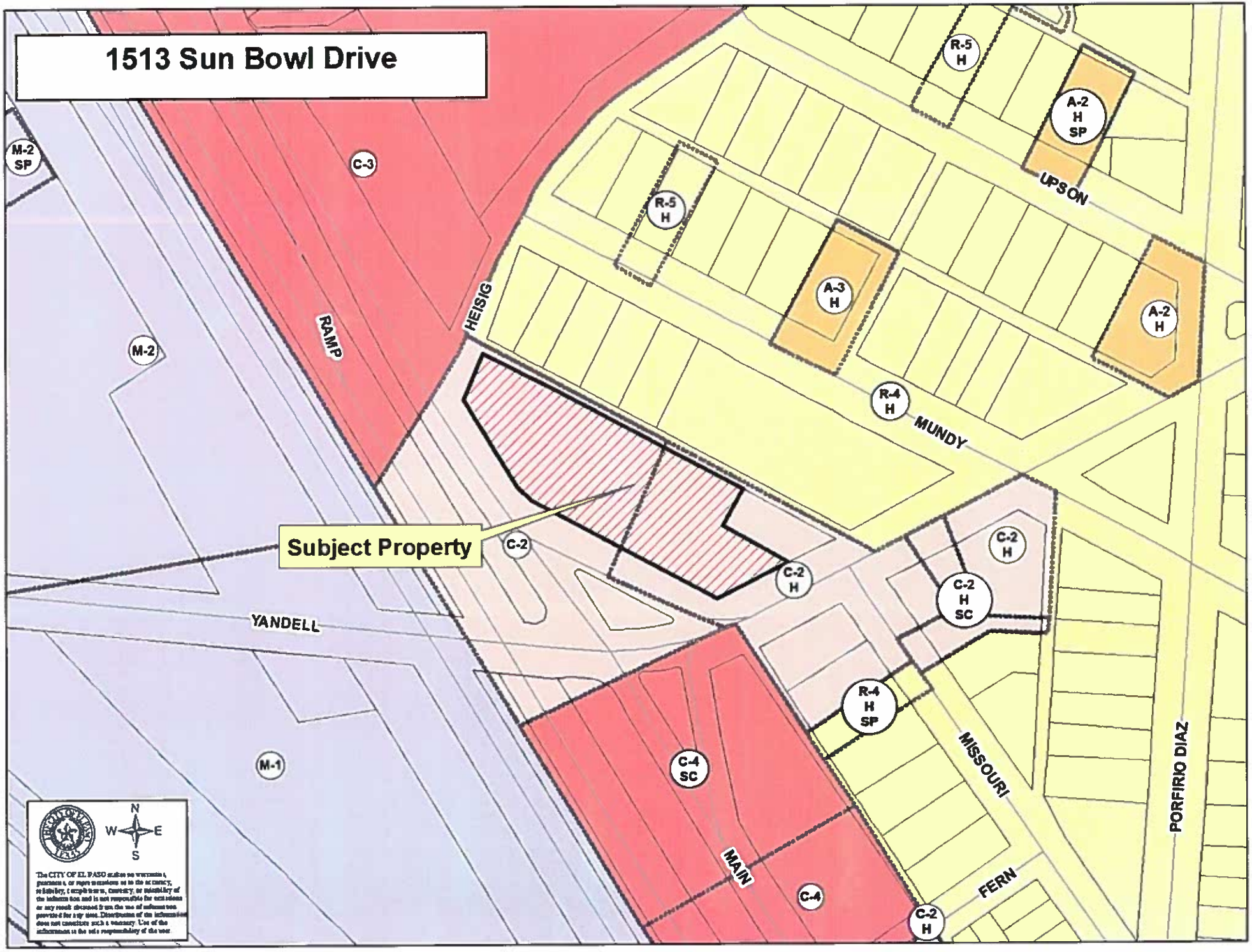


NOTIFICATION MAP



ITEM #3

1513 Sun Bowl Drive



June 8, 2016

Jeff Howell
City of El Paso Planning & Inspections Department
801 Texas Avenue
El Paso, TX 79901

RE: Variance Application – 1513 Sun Bowl Drive.

Dear Mr. Howell:

Please accept this letter as part of the accompanying application for variance to waive the camouflage provisions of Section 20.10.455.E.1.g.i for a ground-mounted PWSF in a C-2 zone at the address listed above. For more than a year, Crown Castle International and Verizon Wireless have been seeking a suitable replacement location for a PWSF that was decommissioned and removed due to eminent domain. This left Verizon Wireless with a significant, service-impacting gap in reliable radio frequency coverage that affects its customers in this high traffic area. Despite their good faith efforts, Crown and Verizon have been unable to resolve a conflict between the City's camouflage requirement and Crown's federal obligation to comply with the National Historic Preservation Act as administered by the Texas Historical Commission. As such, the applicants seek a variance to waive this camouflage provision since it has proven an undue hardship as interpreted by staff.

Section 2.16.030 of the municipal code spells out four criteria which must be met for the Board of Adjustment to grant a variance:

> The board of adjustment may authorize in specific cases a variance from the terms of the zoning ordinance (Title 20) or as specified in (Title 21) SmartCode if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done.

We submit that a variance in this specific instance to waive these camouflage provisions would meet all four criteria and, in fact, facilitate the public welfare by aiding in the restoration of critical communications infrastructure to a densely populated and transited area of the city.

1. The variance is not contrary to the public interest.

The installation of a non-camouflaged ground-mounted PWSF at the subject property would not have any adverse impact on the general public, the surrounding neighborhoods, or the city at large. Ground-mounted PWSFs are a permitted use in the C-2 zone provided they meet the relevant requirements spelled out in Section 20.10.455. Aside from the camouflage provision, Crown's proposed facility complies in every other respect with the requirements of the ordinance. A non-camouflaged antenna support structure would not be any less safe than the alternative. From an aesthetic standpoint, we would argue that a non-camouflaged site in this instance would not be detrimental to the neighboring community and may even be an

improvement over the available traditional camouflaging options (discussed at length in #3 below). Finally, the project is still subject to final Special Permit approval by City Council. As such, the granting of a variance would not constitute an approval of the project per se; it would simply allow City Council the leeway to approve the site should it be found to comply with the Special Permit requirements.

It is worth noting that granting the variance would actually be to the public's benefit. In allowing Crown Castle and Verizon Wireless to proceed to the next steps in securing full approval for the facility, the variance would help facilitate the restoration of reliable wireless service (including Enhanced-911 call routing) to residents in the surrounding neighborhoods, commuters along I-10, students and staff on the UTEP campus, and the U.S. Border Patrol who utilizes Verizon Wireless's network.

2) Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.

Crown Castle and Verizon are compelled to request this variance because of extremely unique circumstances surrounding this project.

First, the need for a new facility arises from the exercise of the Texas Department of Transportation's power of eminent domain over the property where the previous facility existed. As part of its improvements to I-10 in the area, the Texas Department of Transportation exercised its power of eminent domain over the property located at 118 Ruhlen Court where Crown Castle owned and operated a 100' un-camouflaged monopole facility with Verizon Wireless antennas and transmitting equipment. This facility was decommissioned and Crown and Verizon currently operate a temporary facility in TXDOT right-of-way where West Yandell Drive intersects the interstate. Due to this unforeseen and special circumstance, Crown Castle and Verizon have spent more than a year attempting to find a suitable location for a facility could meet not only City requirements (setbacks, height restrictions, camouflaging) but also provide coverage equivalent to that of the former site.

A second unique characteristic of this project is the geography of this specific area that the proposed facility must serve. The Rio Grande River cuts a valley through the hilly terrain and the city gradually rises in elevation more than one hundred feet to the north and east where the UTEP campus, Sunset Heights, and other neighborhoods sit. In order to provide adequate coverage along the interstate, on campus, and in the surrounding neighborhoods as far east as Mesa Street, the Ruhlen Court site was 100' tall. Any replacement facility must provide enough height to replicate coverage from the former site. At the same time, the proximity to Mexico presents special challenges to Verizon Wireless who must comply with international treaties which restrict the transmission of radiofrequencies across the border. The facility must be as close to the border as possible with antennas carefully aligned in the opposite direction. This includes physically tilting the antennas slightly downwards so that stray signals don't carry into Mexico where the border curves east again south of downtown. As such, the type of antenna support structure used must permit the necessary antenna flexibility to comply with the international treaty. Finally, the proximity of the UTEP campus and I-10 make this facility especially important to Verizon customers. Given the high volume of voice and data traffic that

the site handles at any given moment, the necessary antennas and equipment must be incorporated into the final design for it to function correctly. These topographic, geographic, and demographic factors significantly limit the locations and structure designs available to Crown and Verizon to restore adequate service in a commercially reasonable and technically feasible manner.

The third and most difficult hardship has been balancing Crown and Verizon's dual role as private entities seeking land use permits from the City of El Paso and as FCC-licensees which must comply with federal requirements. The installation of facilities is considered a "federal undertaking" since they must be authorized by a federal agency, the FCC. This requires compliance with Section 106 of the National Historic Preservation Act wherein the effects of such undertakings (the construction of the facility) on designated or eligible historic properties in the vicinity must be considered. The Texas Historical Commission (THC) is the authority who determines whether the project would have no adverse effect on nearby historic properties is required. The THC has maintained throughout this lengthy consultation that "traditional" camouflaged wireless structures such as fake trees, clock towers, steeples and monuments are not appropriate and would have an adverse effect on nearby historical properties since they tend to stand out more than they do blend in. At the Sun Bowl Drive site, the THC has manifested its preference for a completely un-camouflaged tower or some variation on a structure designed to mimic the TXDOT light poles which line I-10 to minimize their prominence from historic properties in the Sunset Heights area. This stance is in direct conflict with the City planning staff who assert that such designs would not qualify as camouflaged under the definition and are thus not allowable (discussed at length in #3 below).

Crown and Verizon find themselves caught between two conflicting authorities yet must comply with both. If Crown Castle were to push forward with a design that the Texas Historical Commission believes would have an adverse effect on historic properties in the area, the case would have to be heard and mediated by the FCC, a process which can take years to play out. Given the critical nature of the communications services provided by Verizon Wireless, this would create an unnecessary hardship that would affect not only the applicants but thousands of El Paso residents, workers, citizens and commuters who rely heavily on their wireless devices on a daily basis.

For the reasons outlined here, Crown and Verizon believe the camouflage requirement constitutes an unnecessary hardship given the unique context of this particular project. Enforcement of a rigid interpretation of "camouflaging" will effectively prohibit Crown and Verizon from replacing the facility it has lost from eminent domain because there simply are no other properties in the vicinity or technically feasible designs that can meet both City and THC requirements. Loosening the camouflage requirement will allow flexibility for all parties to agree upon a design which makes sense for this specific location. Crown and Verizon include such a design as part of this application.

3) The spirit of the ordinance is observed.

In spite of the aforementioned difficulties in finding a design mutually agreeable to the City planning staff and the Texas Historical Commission, Crown Castle and Verizon Wireless

propose a design which we assert does comply with the camouflaging requirement even if planning staff has a different interpretation of the definition:

> Camouflaging is a method of disguising or concealing the appearance of an object by changing its usual color, modifying its shape, or locating it in a structure that complements the natural setting, existing and surrounding structures. In the context of this section, camouflaging includes, but is not limited to, making PWSF antenna support structures resemble man-made trees, locating PWSF antenna support structures in bell steeples or clock towers, or on similar alternative-design mounting structures. (20.10.455.E.1.g.i)

Attached to this application you will find engineering drawings and photographic renderings of a 65' antenna support structure modeled off of the much taller TXDOT light standards that line I-10 along this corridor. Above the light fixture is a circular canister which conceals Verizon's antenna arrays. This design represents the best compromise between Verizon's unique technological needs at this location, the THC's criteria for determining historical appropriateness, and the intent of the City's camouflaging requirement which is to promote the installation of facilities that are the most aesthetically appropriate to any specific location. Verizon requires that a full array of antennas and ancillary network equipment be installed at the top of the pole with enough flexibility to adjust direction and tilt. The canister serves to conceal this necessary equipment from view. A narrower canister or lower antennas will not allow the facility to function as an adequate replacement for the Ruhlen Court site and will negatively impact the network. The THC has concurred that the proposed canister design would not have any adverse effect on nearby historic properties and given its consent to the project. The planning department, however, has stated that it does not consider this design to comply with the camouflage requirement.

We contend that proposed light pole meets this definition of camouflaging because it modifies the shape and design of the antenna support structure to *complement* and mimic the natural setting and existing and surrounding structures. To complement the natural or built environment, a structure must not stand out or draw attention to itself in such way that it seems out of character for the area. For this reason the light pole is the natural camouflaging option since there are already multiple light poles and utility poles on and around the subject property. From the beginning the Texas Historical Commission, understanding that the City required all facilities to be camouflaged, expressed its preference for the light pole design, ideally without any concealment canister whatsoever. Adding the antenna array to a structure otherwise identical one of the TXDOT light poles seems like the best way to blend into the surrounding built environment. Other designs, such as a palm tree or a bell steeple or clock tower are out of place and would only serve to "increase the size and visual impact of the cell array" and undermine the stated purpose of "disguising or concealing the appearance" of the facility.

We believe the definition of camouflaging as written in the ordinance is purposely flexible to address situations such as these where concealment designs that have traditionally been used in the wireless industry may not be appropriate. Indeed, the definition clearly states that it "is not limited to" the examples listed. This gives the City the leeway to consider designs on a case-by-case basis considering the full context of the site in question. If we are to accept only a rigidly

narrow interpretation of the definition by insisting on the use of such "traditional" concealment designs such as faux trees and clock towers, then the City ties its own hands in promoting aesthetically appropriate installations. By way of example, early last year a 125' ground-mounted PWSF camouflaged as a cypress tree was installed on a vacant lot at 6810 Parque del Sol Drive on the West Side. Had this site not been permitted by right in a C-3 zone and been subject to review by the Plan Commission and Council as a Special Use Permit, it is not hard to imagine that the members of these bodies might question the aesthetic appropriateness of this design which, while technically "camouflaged," attracts more attention than it does "disguise" or "conceal" itself. It could be argued that in this location a regular monopole painted a tan color to fade into the backdrop of the mountains would have been more tasteful and would have still met the definition of "camouflaged" since "changing its usual color" is specifically listed as a manner of "concealing or disguising the appearance" of a PWSF. At the time, however, the planning department's strict interpretation of the definition required the applicant to propose to the cypress tree design which, in the eyes of some, may run counter to the spirit of the code since it is stands out more.

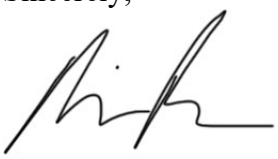
It is Crown's firm position that the light standard design, with or without a canister, not only meets the definition of "camouflaging" as specified in the code but also represents the most appropriate design for this specific location. It complements the existing natural and built environment better than alternate designs since it does not stand out as a structure which draws attention to itself. This facility as designed and proposed is the least visually intrusive means of providing the essential wireless service that many El Pasoans are at risk of losing if a permanent replacement for the Ruhlen Court site is not constructed. Since, however, planning staff has determined that the canister design as proposed with this application does not meet the camouflaging requirement, Crown and Verizon seek this variance in order to provide the necessary flexibility for City Council to approve this design which is most suitable for this location in keeping with the spirit of the ordinance.

4) Substantial justice is done.

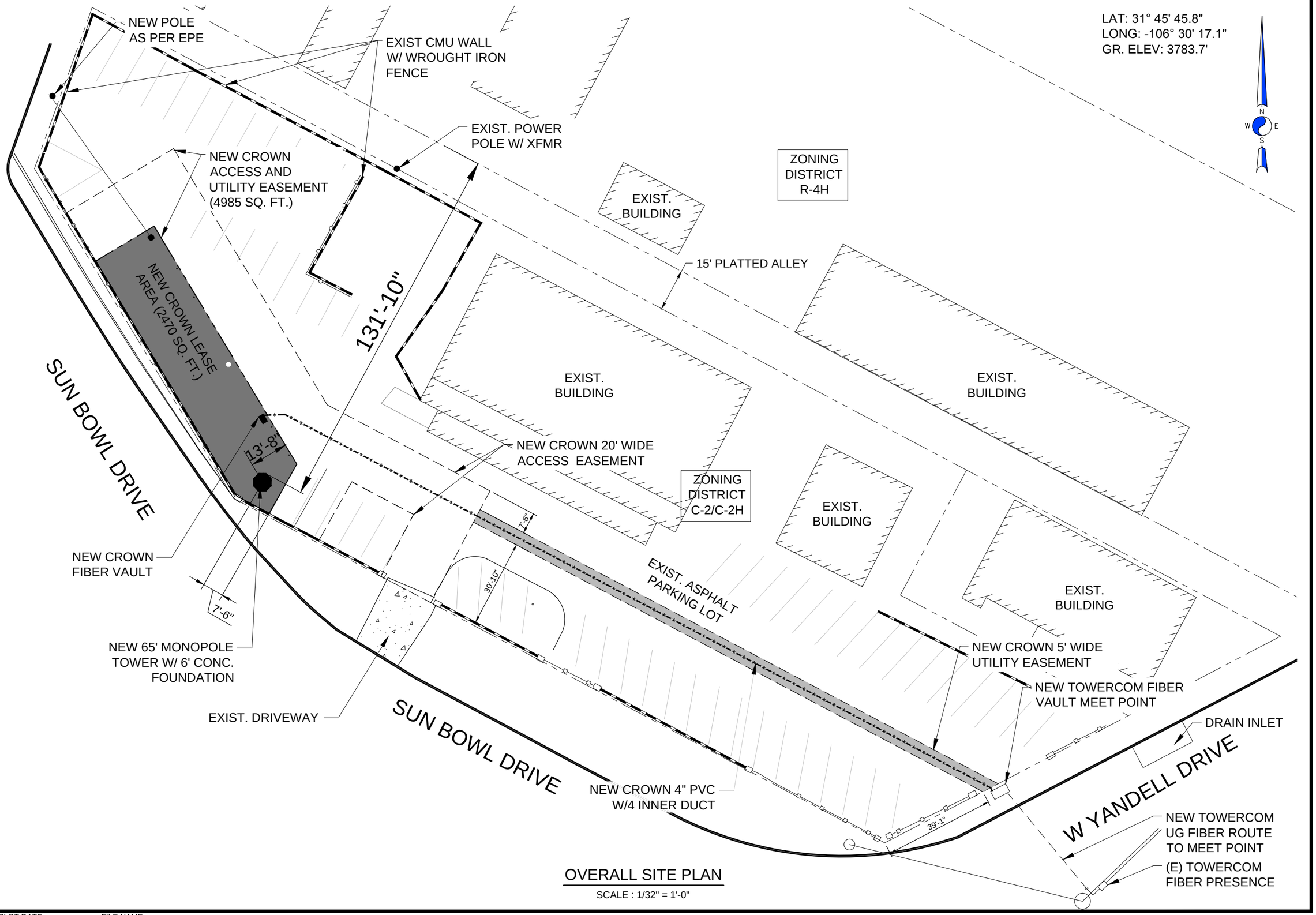
Throughout Title 20.10.455 of the municipal code pertaining to Personal Wireless Service Facilities, the phrase "technically feasible and commercially reasonable" is used repeatedly in reference to the exceptions which City Council may make to setback and height limitations. While it is not used specifically with reference to the camouflaging requirement, it does speak to the spirit of the ordinance in recognizing the unique nature of these facilities and acknowledging that there may be circumstances where exceptions can and should be made. We believe that the same "technically feasible and commercially reasonable" standard can be applied to this request. Crown Castle and Verizon Wireless have gone to great lengths to try to satisfy the City, the Texas Historical Commission, and Verizon's technological needs. The proposal submitted with this application for a design that may not meet the strictest interpretation of "camouflaging" represents the best technically feasible and commercially reasonable solution that still meets the spirit of Title 20.10.455 which is to mitigate to the extent reasonably possible the impact of PWSFs on the community. A decision to grant the variance based on these grounds and the other arguments set forth would be fair and justified.

In this letter we have outlined at length the unique circumstances and challenges which make the strict enforcement of the camouflage provisions of Section 20.10.455.E.1.g.i for a ground-mounted PWSF in a C-2 zone an undue hardship for Crown Castle and Verizon Wireless in their endeavor to maintain robust wireless service in a high traffic area of El Paso. The applicants seek a waiver of these requirements but at the same time emphasize that such a waiver would not result in any real deviation from what the code already requires. The proposed light pole design does substantially meet the definition of camouflaging, is appropriate to the area, has the backing of the Texas Historical Commission, and will allow resident, students, commuters and workers in the area to safely rely on their wireless devices when needed.

Sincerely,



Nicholas Romano
Romano & Associates, LLC
On behalf of Crown Castle International and Verizon Wireless



OVERALL SITE PLAN

SCALE : 1/32" = 1'-0"

CROWN CASTLE
5350 N. 48TH STREET
SUITE 305
CHANDLER, AZ 85226

verizon
4821 EUBANK NE
ALBUQUERQUE, NM 87111

CLEAR WATER
COMMUNICATIONS, INC.
5327 TIMBER TRAIL
SAN ANTONIO, TEXAS 78228
clearwaterengineeringinc@yahoo.com
FIRM REGISTRATION NUMBER
F-4080

STATE OF TEXAS
MIKKO P. AHOLA
11-25-15
80990
REGISTERED
PROFESSIONAL ENGINEER

REVISIONS			
NO.	DATE	DESCRIPTION	BY
1	11-25-15	PRELIM REVIEW	MJ

DRAWN BY: MJ
CHECKED BY: MA
DRAWING DATE: 11-25-2015

CARRIER NAME
VERIZON

SITE NAME
SUN BOWL DR./ELP RIM

BUSINESS UNIT NUMBER
821983

SITE ADDRESS
1513 SUN BOWL DR.
EL PASO, TX 79902

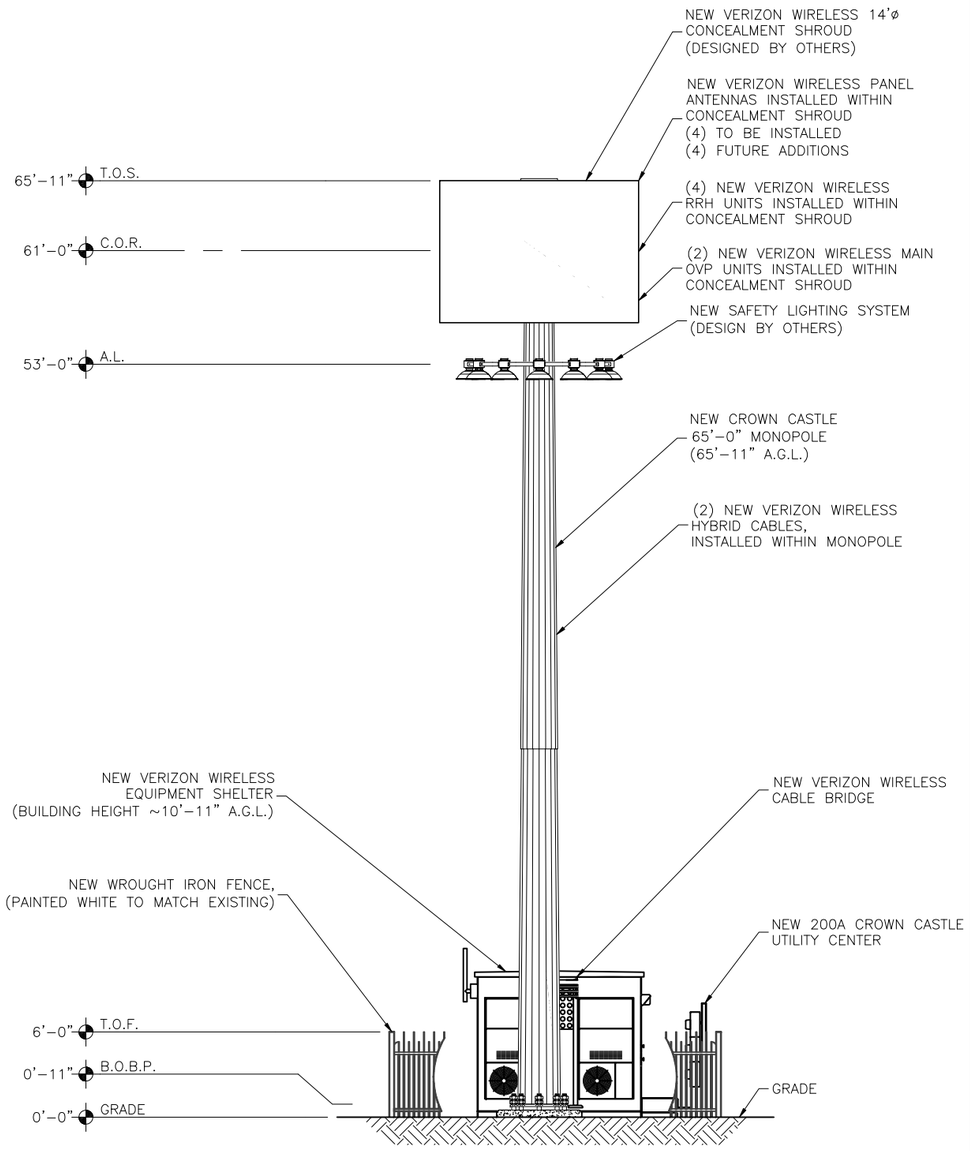
SHEET TITLE
OVERALL SITE PLAN

SHEET NUMBER
C-1

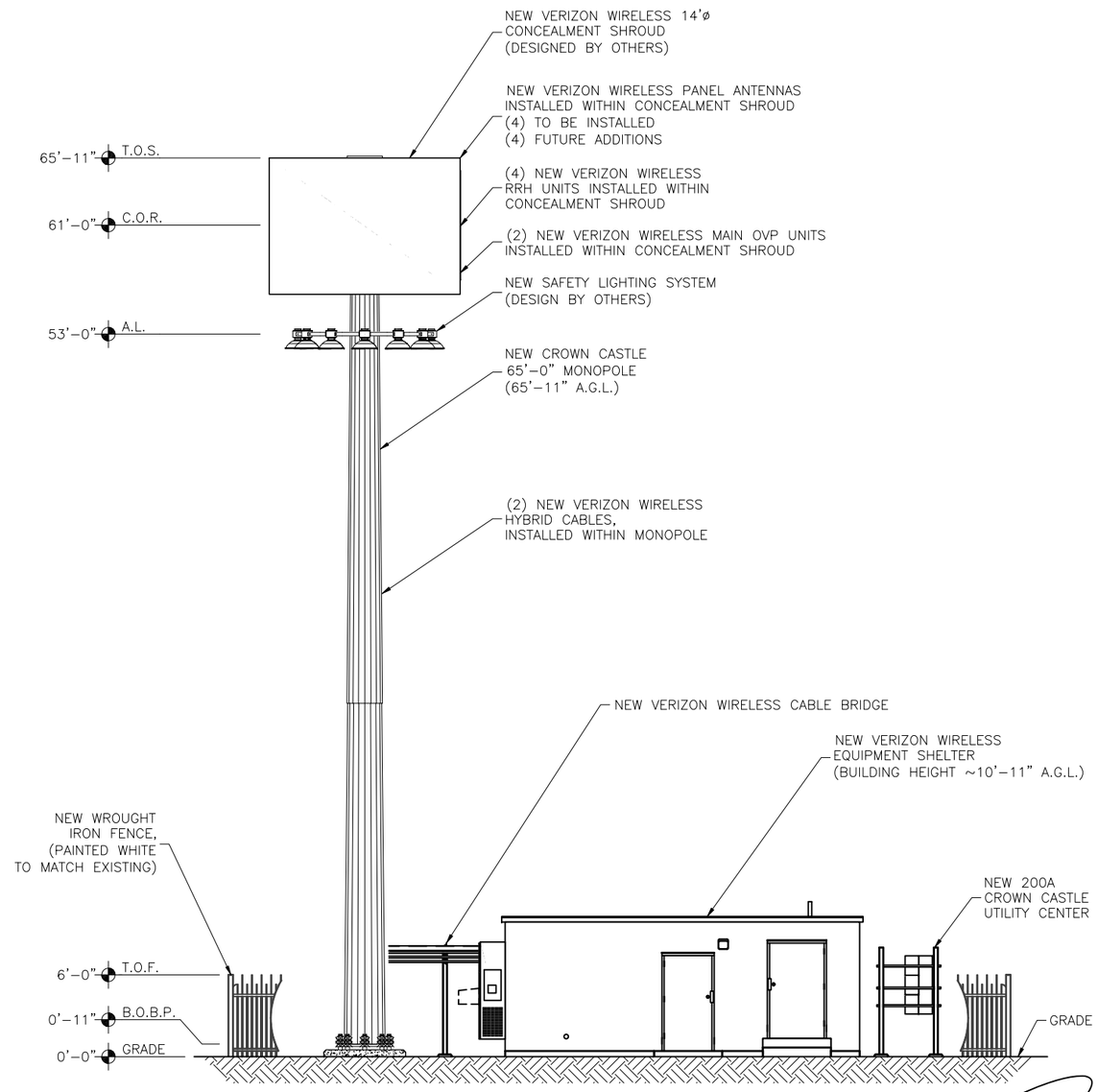
CROWN/USA VERSION: 7.0 DATE:09/01/07

PLOT DATE: FILE NAME:

KEY:	
T.O.S. =	TOP OF STRUCTURE
C.O.R. =	CENTER OF RADIATION
T.O.F. =	TOP OF FENCE
B.O.B.P. =	BOTTOM OF BASE PLATE



NEW SOUTHEAST ELEVATION
SCALE: 3/32" = 1'-0"



NEW NORTHEAST ELEVATION
SCALE: 3/32" = 1'-0"

APPROVED FOR CONSTRUCTION

DESIGNED FOR:

verizonwireless
4821 EUBANK NE
ALBUQUERQUE, NEW MEXICO 87111

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AZ - CA - CO - ID - NM - NV - TX - UT

DESIGNED BY:

REV	DESCRIPTION	DATE	BY	CHK
0	APPROVED FOR CONSTRUCTION	12/17/15	DC	EVR
1	REVISED PER NEW SLF	02/23/16	DC	EVR
2	CONCEALMENT SHROUD ADDED	05/31/16	DC	EVR
3	REVISED PER RF DESIGN	06/06/16	DC	EVR

STATE OF TEXAS
ERIC V. RAWLINS
114785
LICENSED
PROFESSIONAL ENGINEER
6/6/16

PROJECT NAME:

ELP RIM
NEW 65'-0" MONOPOLE
(OVERALL HEIGHT: 65'-11" A.G.L.)

PROJECT ADDRESS:

1513 SUN BOWL DR
EL PASO, TX 79902
EL PASO COUNTY

SHEET TITLE:

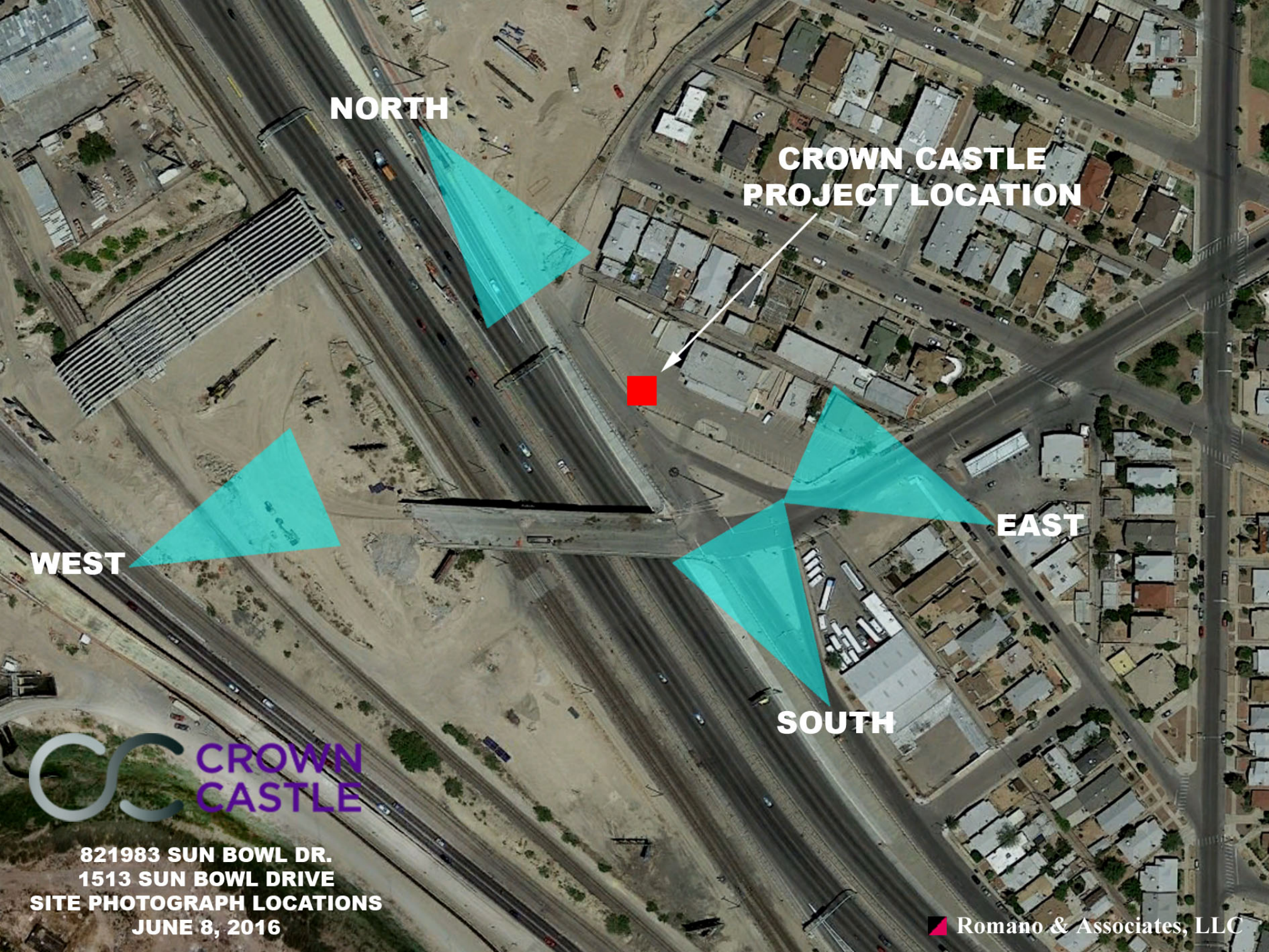
SITE ELEVATION

SAVE DATE:

6/6/2016 11:36 AM

SHEET NUMBER:

A-3


NORTH
CROWN CASTLE
PROJECT LOCATION
EAST
WEST
SOUTH
CROWN
CASTLE
821983 SUN BOWL DR.
1513 SUN BOWL DRIVE
SITE PHOTOGRAPH LOCATIONS
JUNE 8, 2016
Romano & Associates, LLC

BEFORE
CENTRO VIDA WEST
ROAD CLOSED
STOP
CROWN CASTLE
821983 SUN BOWL DR.
SITE PHOTOGRAPH
SOUTH ELEVATION FROM MAIN AVE.
JUNE 8, 2016

AFTER
CENTRO VIDA WEST
ROAD CLOSED
STOP
CROWN CASTLE
821983 SUN BOWL DR.
PHOTO SIMULATION
SOUTH ELEVATION FROM MAIN AVE.
JUNE 8, 2016

BEFORE
CROWN CASTLE
821983 SUN BOWL DR.
SITE PHOTOGRAPH
EAST ELEVATION FROM MISSOURI
JUNE 8, 2016

AFTER
CROWN CASTLE
821983 SUN BOWL DR.
PHOTO SIMULATION
EAST ELEVATION FROM MISSOURI
JUNE 8, 2016

BEFORE
CROWN
CASTLE
821983 SUN BOWL DR.
SITE PHOTOGRAPH
NORTH ELEVATION FROM SUN BOWL DR.
JUNE 8 2016

AFTER
CROWN CASTLE
821983 SUN BOWL DR.
PHOTO SIMULATION
NORTH ELEVATION FROM SUN BOWL DR.
JUNE 8, 2016

BEFORE
CENTRO VIDA
DEERE
CROWN CASTLE
821983 SUN BOWL DR.
SITE PHOTOGRAPH
WEST ELEVATION FROM PAISANO
JUNE 8, 2016

AFTER
CENTRO VIDA
DEERE
CROWN CASTLE
821983 SUN BOWL DR.
PHOTO SIMULATION
WEST ELEVATION FROM PAISANO
JUNE 8, 2016