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May 27, 2021

**VIA EMAIL**

Michael W. Shonafelt  
Newmeyer & Dillion LLP  
895 Dove Street, 5th Floor  
Newport Beach, CA. 92660

Re: Submission for Hearing On Crown Castle Applications

Dear Mr. Shonafelt:

As you know, Crown Castle and the Town of Hillsborough were parties to a mediation undertaken subject to rules that required both parties to treat those discussion as confidential, and that precluded use of mediation statements of any sort as evidence in any proceeding.

A violation of those conditions is, as you know, a serious matter. Yet the letter you submitted to the Town on May 26, 2021 violated the conditions of the mediation in at least three places, as shown by the highlighted paragraphs on the attached excerpt from your letter. We will be submitting this letter to the Council and advising them that these paragraphs cannot be considered for any purpose, and do not constitute evidence supporting the application. Should you or Crown Castle seek to raise these points, or other points that would be inconsistent with the conditions of the mediation orally, we will advise the Council that the information may not be considered, in addition to taking other actions that may be appropriate.

The fact that something was discussed or done in the mediation does not prevent Crown Castle from presenting relevant evidence that may address the same issue. But it may not rely on things purportedly done or conclusions purportedly drawn in mediation to support its position.

Sincerely,

A handwritten signature in cursive script that reads 'Joseph Van Eaton'.

Joseph Van Eaton  
of BEST BEST & KRIEGER LLP



Newmeyer & Dillion LLP  
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May 26, 2021

Michael W. Shonafelt  
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## VIA E-MAIL

Mayor Alvin L. Royse  
and Members of the  
City Council of Town of Hillsborough  
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Re: Crown Castle NG West LLC: 13 Small Cell Facilities

Dear Mayor Royse and Councilmembers:

This office represents Crown Castle Fiber LLC (“Crown Castle”) with regard to the pending applications for the 13 wireless communications facility applications (“Applications”). This letter presents an overview of Crown Castle’s legal rights under both federal and state law and presents an analysis of those rights as they pertain to the Project. Of the 13 Applications, this letter focuses on the eight new steel pole sites that will be before the City Council at its next meeting on May 27, 2021 (H05m2, H07m2, H08m2, H19m3, H20m3, H21m3, H28m3, H31m2) (“Steel Pole Nodes”). Crown Castle reserves its rights to supplement this letter as the hearings on the Applications progress.

### 1. INTRODUCTION

These Applications come before the City Council in a unique manner. They are part of a negotiated, contingent settlement agreement, approved by this City Council on June 8, 2020, (“Settlement Agreement”). The Settlement Agreement seeks to resolve the pending federal case, *Crown Castle NG West LLC v. Town of Hillsborough* (Northern Dist., Cal., 3:18-cv-02473-JS) (“Pending Action”). The Pending Action challenges the Town of Hillsborough’s (“Town”) March 26, 2018, denials of 16 applications for similar wireless communications facilities.

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conduct public hearings on the merits for the various Project applications on with the following dates:

- Thursday, May 27, 2021: 5:00 p.m. Hearing (Steel pole sites in ROW: H05m2, H07m2, H08m2, H19m3, H20m3, H21m3, H28m3, H31m2)
- Thursday, June 3, 2021: 5:00 p.m. Hearing (continue steel pole sites in ROW, *if needed*)
- Saturday, June 12, 2021: 9:00 a.m. Hearing (Wood pole sites in ROW: H30m1, H32)
- Thursday, June 17, 2021: 5:00 p.m. Hearing (Town Owned Property sites: H02m3, H12m3, H27m3)
- Saturday, June 19, 2021: 9:00 a.m. Hearing (Adopt resolutions of decision for all sites)

Photo-simulations for the Steel Pole Nodes are included in Exhibit A to the Settlement Agreement. One of those nodes is depicted here at **Exhibit 1**. Construction drawings for each node are also included in Exhibit A. Construction drawings for one of those nodes is depicted here at **Exhibit 2**. Crown Castle representatives and Town staff discussed the Project's locations and alternatives on several occasions since 2014. The WCF's location and design have been specifically chosen in accordance with the Town's municipal standards -- to the extent feasible -- to assure the Project is built to the least intrusive means while assuring the Project's feasibility. For a more extensive discussion of the designs and locations, see Discussion, *Infra*, Part 3B ("Least Intrusive Means"). Note that this Letter sometimes refers to the nodes as wireless communications facilities ("WCFs"), the term used as the Town's code.

### 3. THE PROJECT'S PROCEDURAL HISTORY

In 2017, Crown Castle -- under its predecessor entity, Crown Castle NG West LLC -- submitted the following applications to the Town to build 16 nodes in a collaborated effort with Town staff:

	Node Designation	Permit No.	Location	Type
1	H01	ENC17-0013	Adjacent to 1455 Marlborough Road	Wood utility pole/pole-mounted equipment
2	H02m1	ENC17-0014	Adjacent to 1230 San Raymundo Road	Wood utility pole/ground-mounted
3	H05m1	ENC17-0026	Adjacent to 720 Chateau Drive	New steel pole/ground-mounted equipment

met. Moreover, each node is dependent location-wise on the other to relay signal from one node to the other and thereby create a viable network on a citywide basis.

Accordingly, the antenna heights and location of the Project nodes were chosen to provide the minimum signal level needed to meet critical coverage and capacity needs in the service area. Despite the technical limitations of a low-profile, small-cell system, Crown Castle seeks to maximize the coverage of each node location, since maximization of the node performance equates to a lower overall number of facilities and a less intrusive system. Accordingly, the Project location was chosen to provide an effective relay of signal from adjacent sites, so that ubiquitous coverage of the minimum signal level is provided throughout the service area with the minimum number of facilities. The selected locations maximize the RF coverage of the Project and minimize interference/overlap with the other facilities, resulting in a lower overall number of facilities and a less intrusive system. The ROW is ideal for the Project from an aesthetic standpoint because the ROW is an area already impacted with utilities and similar features typical of developed roadways.

The proposed sites were selected based on a balance between minimizing visual intrusion to the extent feasible and achieving the required RF service objective. Importantly, the currently proposed node locations and designs were identified after exhausting other possible locations in the relatively small DAS coverage area. (See, e.g., **Exhibit 4**, [alternatives analysis, H31m2.]) To the extent that the significant gap/least intrusive means criteria were applicable, Crown Castle satisfied its burden of proof under the burden-shifting process established by *T-Mobile U.S.A. Inc. v. City of Anacortes*. That conclusion is underscored by the fact that it developed its proposed sites and designs with the input of -- and in full collaboration with -- Town staff.

- (2) To the Extent the Proposed Facilities Do Not Comply with the Town's WCF Design Criteria, they Are Either Preempted or an Exception is Warranted.

The Town contends that the Steel Pole Nodes are inconsistent with the following Town policies (Town Policy No. 19-01) ("Policy"):

- Policy, C3: The height exceeds the overall height limit of 32 feet. Also the base enclosure exceeds the 24 inch limit for width.
- Policy, E7: To the extent that it applies (that is, if an exception is not warranted under C.3 or G.4) the accessory equipment installed aboveground cumulatively exceeds nine cubic feet in volume.
- Policy, E9: The WCFs all propose to use a separate ground-mounted electric meter pedestal.
- Policy, E10: One of the WCFs, H07, will displace landscaping, though minimal.
- Policy, G4: Similar to C3, the equipment shrouds at the base of the pole exceed 24 inches wide on any side.

- Policy, E1: The proposed WCFs identified as H08, H19 and H31 are all located in areas where “substantially all existing utilities within 1,500 feet from the site are already located underground” but they do not propose to place the equipment other than antennas underground.

Crown Castle contends that the above policies are unreasonable as a matter of law and inherently result in a prohibition of services, as they are infeasible to implement. (See *City of Portland, supra*, 969 F.3d at pp. 1041-1042.) For example, the Policy requires undergrounding within 1,500 feet of undergrounded utilities. Undergrounding would require extensive excavation to install a cement equipment vault of approximately 20 feet by five feet in dimension. Such an excavation would invariably lead to impacts to tree root systems and roads and would disrupt the use of the ROW. If an underground vault were deployed for the Steel Pole Nodes, it would require active cooling fans and sump pumps, which would violate the Town’s noise ordinance, as that ordinance features a zero standard for discretionary outdoor noise. (See HMC, ch. 8.32.) The design and size of pedestal bases proposed were fully vetted with the Town; it was demonstrated that the dimensions are the minimum necessary to house the required RRUs delivering the three bands of service. The Policy’s maximum cubic volume and dimensions for aboveground cabinets are unrealistic, and likely formulated without input from industry stakeholders. The proposed dimensions for the pedestal bases for the Steel Pole Nodes are the minimum feasible to house the required RRUs without giving rise to excessive thermal loading that would require active cooling devices. Regarding the separate meter pedestal, PG&E requires separate meter pedestals for customer-owned poles. Meter height requirements also prohibit integration of the meters into the pedestal base; nor could meters be feasibly incorporated into the base unit for the thermal load and fitment/space reasons described above. For those reasons, meters must be ground-mounted separately. Finally, the antenna height (35 feet) is the minimum necessary to achieve the RF objectives due to foliage obstructions. With respect to landscaping displacement, reasonable and feasible mitigation can be made a condition of approval. For the above reasons, the Policy provisions cited are either void as infeasible or require a proper exception under the Policy provisions.

- (3) Small Cells and DAS as Least Intrusive Means Technology, by Design.

Even apart from the careful siting of the facilities that are part of a small cells or DAS system, the technological configuration of small cells and DAS nodes is inherently minimally intrusive by design. Small cells and DAS were developed as a smaller-scale solution to the larger macro-site or cell tower. It therefore represents a significant technological advance in the development of reduced-profile wireless transmission devices. The nodes are designed to be smaller scale and lower power to allow them to integrate more easily into their surroundings and thereby render them less aesthetically intrusive. While it is impossible to make the facilities invisible, each facility has been designed to blend with existing features in the road to the extent feasible.