

VA-04-008

612.18

**VARIANCE OF USE  
VOICE STREAM PCS II d/b/a T-MOBILE**

A request by Voice Stream PCS II d/b/a T-Mobile for approval of a Variance of Use to allow an 80-foot stealth pine commercial tower on 2.7 acres in the RR-2 (Rural Residential) District. The property is located at the southeast corner of the intersection of State Highway 105 and Sierra Way, approximately 2 ½ miles east of Interstate 25. The parcel is addressed as 17995 Sierra Way, in the Tri-Lakes Planning area. Assessor's Tax Schedule #61180-09-003.

**PREPARED BY**

Mike Pesicka  
7/8/04

**APPLICABLE RESOLUTIONS**

Approval                      Page 19  
Disapproval                  Page 20

**DEVELOPMENT SERVICES DEPARTMENT RECOMMENDATION:** Should the applicant demonstrate to the satisfaction of the Planning Commission that peculiar and exceptional practical difficulties or undue hardship exist, the following conditions and notations are suggested.

**CONDITIONS**

1. Approval is limited to the proposed commercial tower of eighty (80) feet in height, designed to accommodate three (3) major users, and antennas and equipment buildings as depicted in the applicant's letter of intent and site drawings.
2. The Variance of Use is limited to five (5) years from the date of Board of County Commissioner's approval. Specific items for the Board of County Commissioners to review at the end of this five year period shall be changing technology which could result in reduced tower height, changes in specific tower related regulations on the Federal and local level, and visual integrity of the tower as compared to the original approval.
3. This Variance of Use approval shall be deemed abandoned, and of no further force and effect, if the primary intended use and/or activity has not been substantially implemented upon the approved site within one (1) year of the Board of County Commissioners' Variance of Use approval, or if implemented, has been discontinued for a period of one (1) year. For the purpose of this condition, this Variance of Use shall be deemed discontinued if the primary intended use has not been actively and regularly conducted on the approved site.

4. The tower shall be painted and designed to blend in with the natural surroundings to be determined by the Development Services Department.
5. The Telecommunication Site shall remain in compliance with the approved site plan, including, but not limited to landscaping, fencing, access etc
6. Prior to the Development Services Department's authorization for the issuance of a building permit, the applicant shall submit a Plot Plan in accordance with approval and Section 37 of the El Paso County Land Development Code.
7. The tower shall remain designed to allow for collocation of other antennae.
8. The equipment at the base of the tower shall be screened by a six (6) foot view obscuring fence.
9. Prior to authorization of the building permit, a co-location agreement shall be recorded against the property that allows additional users on the tower and an F.A.A. Air Hazard Determination shall be submitted to the Development Services Department.
10. The tower shall be placed on the property to contain on-site all ice-fall or debris from tower failure.
11. The tower shall not be lighted. *If the FAA requires that the tower be lighted then the applicant shall follow FAA regulations.*

#### **NOTATIONS**

1. Costs incurred to establish the business or comply with the conditions of approval shall not be used as a basis of extending the use beyond the specified time limit.
2. No subsequent enlargement, expansion or modification of the use shall be allowed unless the proposal is reevaluated and goes through the public hearing process in accordance with the requirements of the El Paso County Land Development Code.
3. If the variance of use is abandoned or discontinued for one (1) year or longer the variance of use shall be deemed abandoned and of no further force and effect.
4. The Development Services Department shall have the right to enter the site, without notice, to inspect the facility for compliance with the terms and conditions of this variance of use.

5. Variance of Use requests not forwarded to the Board of County Commissioners for consideration within 180 days of Planning Commission action shall be deemed withdrawn and shall have to be resubmitted in their entirety.

**PUBLIC NOTICE:** The property was posted on July 6, 2004.

**PUBLIC NOTIFICATION:** The Development Services Department notified adjoining property owners of applicant's intent on July 6, 2004. A summary of their responses will be given at the meeting.

#### **ADJOINING LAND USE AND ZONING**

|       |                           |                          |
|-------|---------------------------|--------------------------|
| North | Single Family Residential | RR-3 (Rural Residential) |
| South | Single-Family Residential | RR-2 (Rural Residential) |
| East  | Single-Family Residential | RR-2 (Rural Residential) |
| West  | Single Family Residential | RR-2 (Rural Residential) |

**HISTORY:** The property was not zoned prior to 1965, at which time it was zoned to the A-4 (Agricultural) Zone District. The A-4 Zone District was reclassified to the RR-2 (Rural Residential) Zone District in 1991. In 1959, the property was platted as Tract 78 of the Arrowwood Subdivision Filing 2. There is an existing single family dwelling on the property that was constructed in 1996.

**SUMMARY OF PROPOSAL:** The applicant is applying for a variance of use to allow an 80' mono-pine telecommunications tower, designed and painted to match the surrounding trees, and the accompanying electronic equipment cabinets to be placed at the base of the pole. Antennas will be mounted at the top of the pole not to exceed 80' in height. Access will be limited to the existing driveway off of Sierra Way. The T-Mobile facility will be unmanned and will require monthly site visits for maintenance purposes. The facility will be designed to accommodate future wireless providers. The applicant is aware of all FCC and FAA rules and has agreed to comply with them.

#### **AGENCY COMMENTS**

**EL PASO COUNTY DOT – ENGINEERING DIVISION:** No new access to Sierra Way or State Highway 105 will be allowed. No objections to the Variance of Use request.

**COLORADO DEPARTMENT OF TRANSPORTATION:**

Approval of the request will not negatively impact the state highway right of way. Drainage to the state highway right of way shall not exceed the undeveloped historic rates. All rates in excess of historic shall be detained on site and released at historic levels.

All discharges to the CDOT highway drainage system must comply with the applicable provisions of the Colorado Water Quality Control Act and the Colorado Discharge Permit Regulations, and are subject to inspection by the CDOT and CDPHE. Although El Paso County may or may not be a municipality that is required to obtain MS-4 permits, CDOT would like to emphasize that this development devise and implement a permanent plan for periodic removal and disposal of sediment from detention facilities and for maintenance of development detention facilities. Attached is the CDOT Environmental Clearances Information Summary listing some of the more commonly encountered environmental permits/clearances that may apply to activities and contacts for questions regarding these permits/clearances.

On-premise and off-premise signing shall comply with the current Colorado Outdoor Advertising Act, sections 43-1-401 to 421, C.R.S., and all rules and regulations pertaining to outdoor advertising.

Any utility work within the state highway right of way will require a utility permit from the CDOT.

**MOUNTAIN VIEW ELECTRIC ASSOCIATION:** No objections to the Variance of Use.

**ENVIRONMENTAL SERVICES DEPARTMENT:** The Environmental Services Department (ESD) has completed its review of the Variance of Use for Voicestream PCS II d/b/a T-Mobile. Our review consisted of the following items; wetlands, general wildlife resources, federal and state listed threatened or endangered species and migratory birds.

- 1) It is recommended that the applicant consult with the FWS regarding any potential migratory bird impacts related to the project.

It should be noted that the U.S. Army Corps of Engineers and the FWS have regulatory jurisdiction over wetland, threatened and endangered species and migratory bird issues, respectively. Thus, as indicated above, it is strongly recommended that the applicant obtain the necessary approvals from the referenced federal agencies as part of their planning process.

**U.S. ARMY CORPS OF ENGINEERS:**

This project has been reviewed in accordance with Section 404 of the Clean Water Act under which the U.S. Army Corps of Engineers regulates the discharge of dredged and fill material and certain excavation activities in waters of the United States. Waters of the U.S. includes ephemeral, intermittent and perennial streams, their surface connected wetlands and adjacent wetlands and certain lakes, ponds, drainage ditches and irrigation ditches that have a nexus to interstate commerce. Based on the information provided, a Department of the Army permit will not be required for this activity.

Although a Department of the Army permit will not be required for this activity, this does not eliminate the requirements that other applicable federal, state, tribal, and local permits are obtained if needed.

**EL PASO COUNTY SOIL CONSERVATION DISTRICT:** No objections to the proposed Variance of Use.

Other agencies notified. Their responses, if available, will be given at the meeting:

- County Attorney's Office
- El Paso County Health Department
- Regional Building Department
- El Paso County Parks Department
- Lewis-Palmer School District #38
- Tri-Lakes Fire District
- NEPCO Homeowners Assoc.

SECTION 35.9  
 STANDARDS GOVERNING THE APPROVAL OR DISAPPROVAL  
 OF A PETITION FOR A USE VARIANCE

The Planning Commission may recommend approval or disapproval of a petition for a use variance to the Board of County Commissioners. The Board of County Commissioners may either approve or disapprove a petition for a use variance. As a minimum, all actions shall be based upon standards set forth in this Code. The power of the Board of County Commissioners to vary the provisions of these Zoning Regulations is permissive, not mandatory, and shall not be exercised in such a way as to frustrate the scheme or intent of the Zoning Regulations. The power to grant variances shall be exercised sparingly and in exceptional situations where the strict application of any of the provisions of these Zoning Regulations would result in peculiar and exceptional practical difficulties or undue hardship upon either the owner or the contract purchaser of the property.

## PLANNING DIVISION COMMENTS:

- 1) Approval should be limited to the one (1) proposed commercial tower eighty (80) feet in height designed to accommodate three (3) major users and antennas and equipment buildings as depicted in the applicant's letter of intent and site drawings.
- 2) The applicant has indicated that T-Mobile radio-frequency engineers have determined that the antenna will need to be a minimum of 80' in height to avoid coverage gaps for wireless uses. The height also makes the tower more attractive to other wireless providers to collocate on this tower. If the request is approved, great care should be taken to design the tower to blend in with the surrounding natural environment to preserve views of the Front Range and the Black Forest area.
- 3) Trees will probably need to be removed in order to construct the tower and associated equipment cabinets. The number of trees removed should be kept to a minimum so as to not alter the character of the property and neighborhood. The significant number of trees on the property help to provide screening for the lower half of the pole and the equipment cabinets.
- 4) The proposed facility is located within the Ponderosa Breaks SubArea 9 of the Tri-Lakes Comprehensive Plan. Land use in this area is predominantly low density residential development of 2.5 to 5 acre lots. There is no commercial or high density residential development within the Ponderosa Breaks SubArea 9. If commercial development is to occur it should serve the needs of the local community, be located at major intersections, have limited hours of operation and be consistent with the natural surroundings.
- 5) The term of the Variance of Use shall be limited to five years after which time the use will be reviewed by the Development Services Department with further recommendation to the Board of County Commissioners for either extension or revocation being based upon said review and application.
- 6) The Telecommunications Act of 1996 includes certain provisions affecting local government review of proposed facilities for provision of personal wireless services. A local government cannot discriminate between different providers, cannot regulate facilities based upon environmental affects of radio frequency emissions to the extent that such facilities comply with FCC regulations regarding such emissions, and are required to act upon applications for facility sites within a reasonable amount of time. Section 704 of the Act mandates that a decision to deny a request must be in writing and supported by substantial evidence contained in a written record and also provides for an expedited court review of actions.

- 7) The current zoning regulations encourage the location of communication facilities in the commercial and industrial zone districts, the location of which are not necessarily in conformance with communication needs of the industry. A number of towers have been approved under the Variance of Use process. After enactment of the Telecommunications Act of 1996, the Board of County Commissioners encouraged the location of antennae on existing facilities, existing buildings, water towers, etc. Staff has been administratively approving location of antennae on existing facilities.
- 8) Commercial Towers are permitted as a Use Subject to Special Review in most commercial (except POC and NBD), and all industrial zones districts and the A-35 (Agricultural) zone district.
- 9) The parcel is zoned RR-2 (Rural Residential) District. The RR-2 zone district does not allow Commercial Towers as a Permitted Principle Use or a Use Subject to Special Review. The applicant has conducted a search within the proposed coverage area for a zone district that would accommodate commercial towers. The applicant has indicated the search was unsuccessful in the attempt to locate a zone district or existing buildings or towers that can meet the coverage needs.
- 10) The application is processed as a Variance of Use since a commercial tower is not listed as a special use in the RR-3 zone district. The burden is upon the applicant to demonstrate that this is the necessary site for this facility. Typically, the Planning Commission and Board of County Commissioners require demonstration that the best or only site for the facility as the basis for the hardship.
- 11) Variance of Use approvals are subject to Board of County Commissioner's review five (5) years from the date of Board of County Commissioner's approval. Specific items for the Board of County Commissioners to review at the end of the five years period include:
  - A. Changes to technology or status, which would reduce the required height or necessity of the tower.

The Development Services Department is unaware of any changes to technology that would reduce the tower's height. The engineered modeling suggests that the current location is both the best and only location to meet the coverage needs.
  - B. Changes in specific tower related regulations on the Federal and Local level.

*Some changes to the zoning requirements as they affect commercial towers are proposed as part of the update to the El Paso County Land Development Code, which is planned to be revised within the next year or so.*

12. Variance of Use requests may be approved on one of two findings:
  - a. Peculiar and exceptional practical difficulties
  - OR-
  - b. Undue hardship upon either the owner or the contract purchaser of the property.

It is the applicant's burden to establish these factors to justify the location of a tower at this site.

**ENCLOSURES**

Vicinity Map  
Letter of Intent  
Plot Plan  
Elevation Drawings



**EL PASO COUNTY  
VARIANCE OF USE APPLICATION**

**LETTER OF INTENT/PROJECT SUMMARY**

**Petitioner:**

VoiceStream PCS II Corporation d/b/a T-Mobile, offers its wireless communications services in 45 of the top 50 U.S. markets. T-Mobile is the new name for VoiceStream Wireless. T-Mobile USA, Inc., is a member of the T-Mobile International group, the mobile telecommunications subsidiary of Deutsche Telekom AG. T-Mobile USA and its affiliates own licenses to provide service to 95% of the U.S. population.

**GSM:** Global System for Mobile Communications (GSM) technology

T-Mobile's PCS network uses GSM technology. "GSM" stands for Global System for Mobile Communications, the international digital radio standard created by the European Telecommunications Standards Institute. GSM is the most widely used wireless technology standard in the world. Developed to allow users to roam freely among markets, it has become the globally accepted standard since the first systems began commercial operation in 1991. In the United States, GSM-based PCS 1900 has been accepted by the American Standards Institute (ANSI) as a standard for the PCS frequencies allocated by the FCC at 1900 MHz.

T-Mobile USA is the only national carrier to operate a ubiquitous GSM (Global System for Mobile Communications) network across its entire footprint. T-Mobile holds license in the Denver Market as follows: Transmit: 1950-1965 MHz; Receive: 1870-1885 MHz.

**Wireless Technology:**

A wireless system operates by dividing a large geographical service area into cells and assigning the same frequencies to multiple, non-adjacent cells. This is known in the industry as frequency reuse. As a subscriber travels across the service area, the cell is transferred (handed-off) from one cell to another without noticeable interruption. All the cells in a wireless system are connected to a Mobile Telephone Switching Office (switch) by landline or microwave links. The switch controls the interconnection between the public telephone network (such as Qwest) and the cell site for all wireline-to-mobile and mobile-to-wireline calls.

A network of wireless sites is created to help eliminate consumer service problems such as: dropped calls, blocked calls, no signal, or poor quality because a site is too far away or not geographically situated to be able to provide service.

**Siting Practices:**

In siting a new installation, a wireless communications provider requires a location that is technically compatible with the established network. A general area is identified based upon engineering constraints and the desired area of service. Specific locations within that general area will be evaluated using the following criteria (not necessarily in order of priority): topography; availability of road access; electrical power; land-based telephone lines; leasable lands; availability of suitable existing structure for antenna mounting; opportunities to mitigate possible visual impact; screening potential of existing vegetation, structure and topographic features; zoning that will allow a wireless communications installation;

compatibility with adjacent land uses; least number of sites to cover the desired area; and the greatest amount of coverage potential.

It is T-Mobile's policy to locate wireless communications installations on existing structures whenever possible.

**Property Description:**

The proposed Commercial Tower facility will be located at 17995 Sierra Way. The parcel is located in the "RR-2" Zone District. The parcel is owned by Allen Goodman and is currently improved with a house and tractor service workshop. T-Mobile is leasing approximately 450 square feet in the north central portion of the property. Access will be via Sierra Way over an existing gravel road.

**Nature of Request/Zoning Analysis:**

T-Mobile is requesting a Variance of Use, Subdivision Exemption and any other permits necessary to allow for the construction of a Commercial Tower facility in the RR-2 Zone. The T-Mobile facility will consist of a stealth pine tree not to exceed 80' in height, panel antennas located near the top of the stealth tree and its accompanying equipment cabinets at the base of the pole (see Exhibit G "Site Plans and Survey").

Chapter IV, Section 35.11 "Requirements for a Commercial Tower or Private Tower" of the El Paso County Land Development Code allows the following:

A commercial tower may only be approved in those zones where such use is subject to Special Review.

The subject property is zoned RR2 in which a commercial tower is not allowed as either a Permitted Principal Use or Special Use.

T-Mobile's proposed facility will therefore be subject to a Variance of Use for the RR2 zoning district. As set forth in the accompanying exhibits, this application conforms to all the requirements and standards of the Zoning Code. Further, all setbacks will be met, and no streets, rights-of-way, or easements will be encroached upon.

**Communication Facility Components and Operations:**

Communications facilities constructed by T-Mobile consist of a tower or other antenna support structure, three to twelve panel antennas, base station equipment and a generator or emergency power source, when needed. The proposed PCS facility will not generate a nuisance, noise or odor, nor will the facility injure public health, safety, morals or general welfare. Such technology does not interfere with any form of communication whether public or private, but will provide vital communications in emergency situations. Wireless technology is commonly used by local residents and emergency personnel to protect the general public's health, safety and welfare.

**Statement of Operations:**

T-Mobile telecommunication facilities are not staffed and have no regular hours of operation. The site will not impact existing traffic patterns. No water or sewer service is required. Ingress and egress will be through existing entrances to property for technicians who need access to the facility to service the site, once a month on average once fully constructed.

### **Federal Communications Commission:**

The Federal Communications Commission (FCC) under the Federal Radio Act of 1927 maintains control in the United States over all the channels of radio transmission and provides for the use of such channels under licenses granted by Federal authority. PCS licensees are issued a blanket license for their entire market area and are not required to submit applications to the FCC in order to license individual wireless sites. The FCC, pursuant to its regulations, has determined that PCS facilities generally do not have environmental effects unless construction of the facility would be a major environmental action or would require Federal Aviation Association (FAA) notification. Major environmental actions are defined by the National Environmental Policy Act of 1969 (NEPA). The NEPA report identifies such potential issues as floodplains, wildlife preserves, endangered species and historic places. Wireless providers obtain NEPA reports prior to proceeding with construction of a new site to ensure compliance.

### **Wireless in the Community:**

The number of Americans using wireless service has increased more than one thousand percent (1000%) in the past decade, from only about 11 million Americans using wireless in 1992 to nearly half of all Americans today. As of January 2004, statistics indicate there are about 153,829,255 current U.S. wireless subscribers who use their wireless phones and other devices to stay connected to family, conduct business, talk to friends and even call for assistance when needed.

With the ever-increasing use of wireless phones, users are demanding better coverage within their residences. Roughly five percent of wireless consumers, or more than 7 million Americans, have "cut the cord" on their home phones and rely now solely on wireless for voice communications. In fact, nearly twenty percent of wireless users consider their wireless phone their "primary phone". Because of this demand, T-Mobile is making a concerted effort to improve service in residential areas. A majority of their new wireless facilities are focused on providing "in-home" coverage.

### **Wireless and Emergency Service:**

Approximately forty percent (40%) of the 911 calls received today by emergency service personnel are made from wireless phones. This equals more than 115,000 wireless phone calls made every day to 911.

As part of the Federal Communications Commission's mandate for E-911, wireless carriers also are required to be able to locate a call from a wireless phone to an increasingly accurate geo-location.

T-Mobile has joined with the National Communications System (NCS) to provide the Wireless Priority System (WPS) in many areas of the United States, including Denver. When trying to make a call in times of emergency or natural disaster, national security and emergency preparedness users will have the ability to gain priority access to the next available cellular channel to place their call. This service will greatly enhance their ability to complete wireless calls during critical times and communicate vital decisions and reports during emergency situations.

WPS is available only to designated leadership at all government levels, national security and emergency preparedness personnel, and private sector critical infrastructure leaders and decision makers, as approved by Federal Communications Commission Rules and Requirements and the NCS. Further, WPS has been designed to have negligible impact on regular cellular users, while providing priority access to vital decision-makers without restricting the public's ability to gain access to those same networks.

# El Paso County Parcel Information

Parcel Number: 6118009003

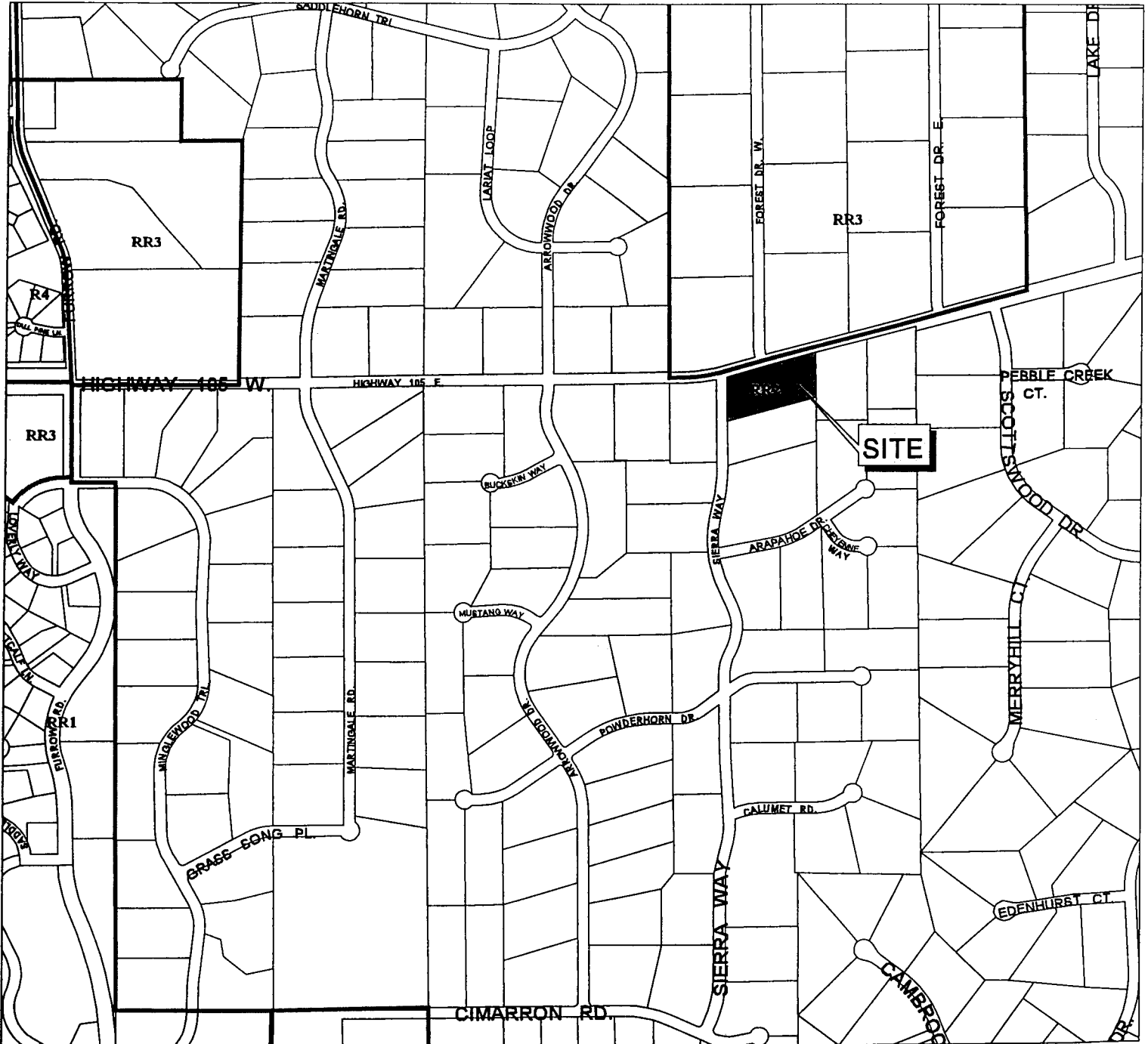
Parcel Address: 17995 SIERRA WAY

Parcel Owner: GOODMAN ALLEN P

File Name: VA-04-008

Zone Map No.: 612.18

Owner Mailing Address: 17995 SIERRA WAY, MONUMENT, CO 80132



Please report any discrepancies to:  
El Paso County GIS/Mapping  
325 S. Cascade  
Colorado Springs, CO 80903  
(719)520-6523

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May 24, 2004

-110-





PROJECT INFORMATION:

GOODMAN &  
 DNO3490/  
 17885 SIERRA  
 MONUMENT, CO 8  
 EL PASO COUN

CURRENT ISSUE DATE:  
 5/11/0

ISSUED FOR:

ZONING

| REV. | DATE     | DESCRIPTION |
|------|----------|-------------|
| 1    | 03/22/04 | PRELIM.     |
| 2    | 04/1/04  | ZO          |
| 3    | 04/28/04 | REV.        |
| 4    | 05/11/04 | REV.        |
| 5    |          |             |
| 6    |          |             |
| 7    |          |             |
| 8    |          |             |
| 9    |          |             |
| 10   |          |             |

PLANS PREPARED BY:

**Communi Services**  
 7720 E. Bellevue, S  
 Englewood, Co. 8011  
 Telephone: (303) 741  
 Fax: (303) 740-96

DRAWN BY: CHK.

DWB

TC

LICENSE:

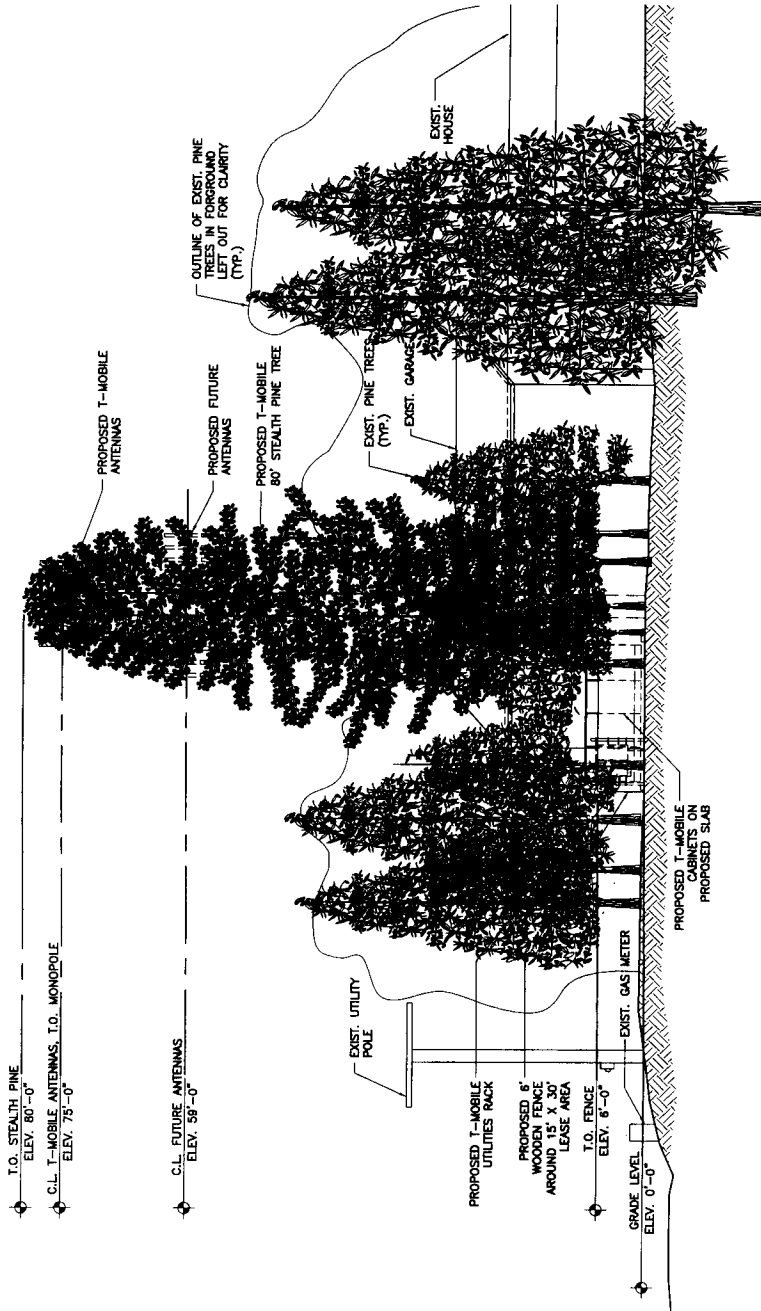
SHEET TITLE:

WEST  
 ELEVATION

SHEET NUMBER:

**22**

63-36" T. 872-8471



1 WEST ELEVATION  
 1/8" = 1'-0"