

Wireless Communication Facilities Ordinance

Chapter 32-70

Danville Town Council

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Legal Framework Overview

FEDERAL LAW

- **Telecom Act**
 - 47 U.S.C. § 332(c)(7)
- **Spectrum Act**
 - 47 U.S.C. § 1455(a)
- **FCC Regulations**
 - Shot Clock Declaratory Ruling
 - Infrastructure Order (47 C.F.R. §§ 1.40001 *et seq.*)

STATE LAW

- **Cal. Constitution**
 - Article XI, § 7
- **Public Utilities Code**
 - PUC § 2902
 - PUC § 7901
 - PUC § 7901.1
- **Government Code**
 - Gov't Code § 50030
 - Gov't Code § 65964.1

Telecommunications Act

- **Substantive Limits on Local Authority**
 - explicit or effective prohibitions
 - unreasonable discrimination
 - radio frequency regulations
- **Procedural Limits on Local Authority**
 - written decision based on substantial evidence
 - act within a reasonable time (FCC, State shot clocks)

Section 6409(a)

State and local governments “*may not deny, and shall approve*” any “*eligible facilities request*” so long as it does not “*substantially change* the physical dimensions of the *existing* wireless *tower or base station.*”

Substantial Change

| Criteria | Towers | Base Stations & ROW |
|---|--|-------------------------------------|
| Height | 20 feet or ten percent | 10 feet or 10 percent |
| Width | 20 feet or tower width | 6 feet |
| Equipment Cabinets | 4 maximum | same, plus other complicated rules |
| Excavation | within the leased or owned area | same, and some further restrictions |
| Concealment | cannot “defeat” the concealment elements | |
| Compliance with Prior Permit Conditions | changes must comply with all prior conditions except limits on height, width, cabinets or excavation | |

Public Utilities Code

- **Section 2902**

- municipalities cannot “surrender” police powers to the CPUC to regulate relationship between the public and utilities

- **Section 7901**

- grants telephone corporations a state-wide franchise to access and use the public rights-of-way to the extent necessary to provide telephone services
- providers cannot **incommode** the public's use
- preserves **aesthetic control** over ROW facilities

- **Section 7901.1**

- preserves reasonable **time, place and manner** regulations over how telephone corporations access and use the ROW
- regulations must be applied equally to all providers

Gov't Code § 65964.1 (aka AB57)

California state law “**deems approved**” any application for a **new or substantially changed wireless site** when:

1. the LG fails to approve or deny the application within the applicable FCC shot clock timeframe; **and**
2. the applicant has provided all public notices required for the application; **and**
3. the applicant has provided notice to the LG that the application is deemed approved;
. . . and possibly . . .
4. 30 days have passed since the notice date.

Proposed Chapter 32-70

- **Incentive-based permitting process**
 - Administrative: certain small cells in the ROW and facilities on private property in preferred locations
 - Planning Commission: all others
- **Application intake procedures to manage workflow**
 - Pre-submittal conferences
 - Submittal appointments
- **Notice, findings for decision and appeals for fairness and transparency**
 - Least intrusive means test as required findings for approval

Proposed Chapter 32-70

- **Special provisions for Section 6409 applications to mitigate potential confusion**
 - Administrative approval for Section 6409 requests
 - No local discretion over qualifying requests
- **Additional level of review for Ridgeline, Scenic and Downtown Business District**
- **Comprehensive development standards that promote concealment**

Proposed Chapter 32-70

- **Location preferences for the ROW based on major arterial roads, away from residences**
- **Strict design guidelines to be adopted by resolution, adaptable to changes in law and technology**
- **Standard conditions of approval to enforce operation and maintenance standards**
 - Deemed-approved applications
 - Permit term, compliance with law, maintenance obligations, backup power operation, inspections, performance bond, indemnification

What is a small cell?

It depends.



unconcealed antenna with exposed jumper cables



weatherhead for utilities routed thru external conduits



equipment cage
RRUS, DC suppressor,
fiber distribution



optional backup battery



power meter



distribution panel and
disconnect switch

there is a better way . . .

concealed antenna with tapered shroud

utilities routed thru internal conduits

equipment cage
RRUS, DC suppressor,
fiber distribution

flat-rate service
obviates the need for
an electric meter







Follow
To T





fiberglass decorative radome concealment

low power antennas

small RRUs





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PARKING

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Same equipment as previous slide properly concealed

Applying the Ordinance

Location, Location, Location

Incentive-Based Permitting Requirements

Permit Required § 32-70.5

a. *Land Use Permit – Administrative Review.* A Land Use Permit, subject to the Chief of Planning's prior review and approval in accordance with the procedures and design regulations in this chapter, is required for:

1. any wireless facility proposed on private property in a preferred location (as specified in section 32.70.7.a) and that would be compliant with all applicable development standards in section 32-70.7; and
2. any wireless facility proposed to be located in the public rights-of-way that would be compliant with all applicable development standards in section 32-70.7 b-c.

b. *Land Use Permit – Public Hearing Review.* A Land Use Permit, subject to the Planning Commission's prior review and approval in accordance with the procedures and design regulations in this chapter, is required for:

1. any wireless facility proposed on private property located in or within 250 feet from a residential district;
2. any wireless facility that requires a limited exception pursuant to section 32-70.9.c;
3. any wireless facility subject to an administrative review process but that has been referred to the Planning Commission by the Chief of Planning; and
4. any wireless facility not identified as subject to an administrative review process in section 32-70.5.a.

Location Preferences § 32-70.7

1. private property and existing or replacement structures in the public rights-of-way outside the downtown business district and not within 250 feet from a residential dwelling;
2. private property and existing or replacement structures in the public rights-of-way within general open space districts and not within 250 feet from a residential dwelling;
3. private property and existing or replacement structures in the public rights-of-way within public and semi-public districts and not within 250 feet from a residential dwelling;
4. new, non-replacement structures in the public rights-of-way within general open space districts and not within 250 feet from a residential dwelling;
5. new, non-replacement structures in the public rights-of-way within public and semi-public districts and not within 250 feet from a residential dwelling;
6. existing or replacement structures in the public rights-of-way on major arterial streets not within 125 feet of a residential dwelling; and
7. new, non-replacement structures in the public rights-of-way on major arterial streets not within 125 feet of a residential dwelling.

Hypothetical Small Cell Application

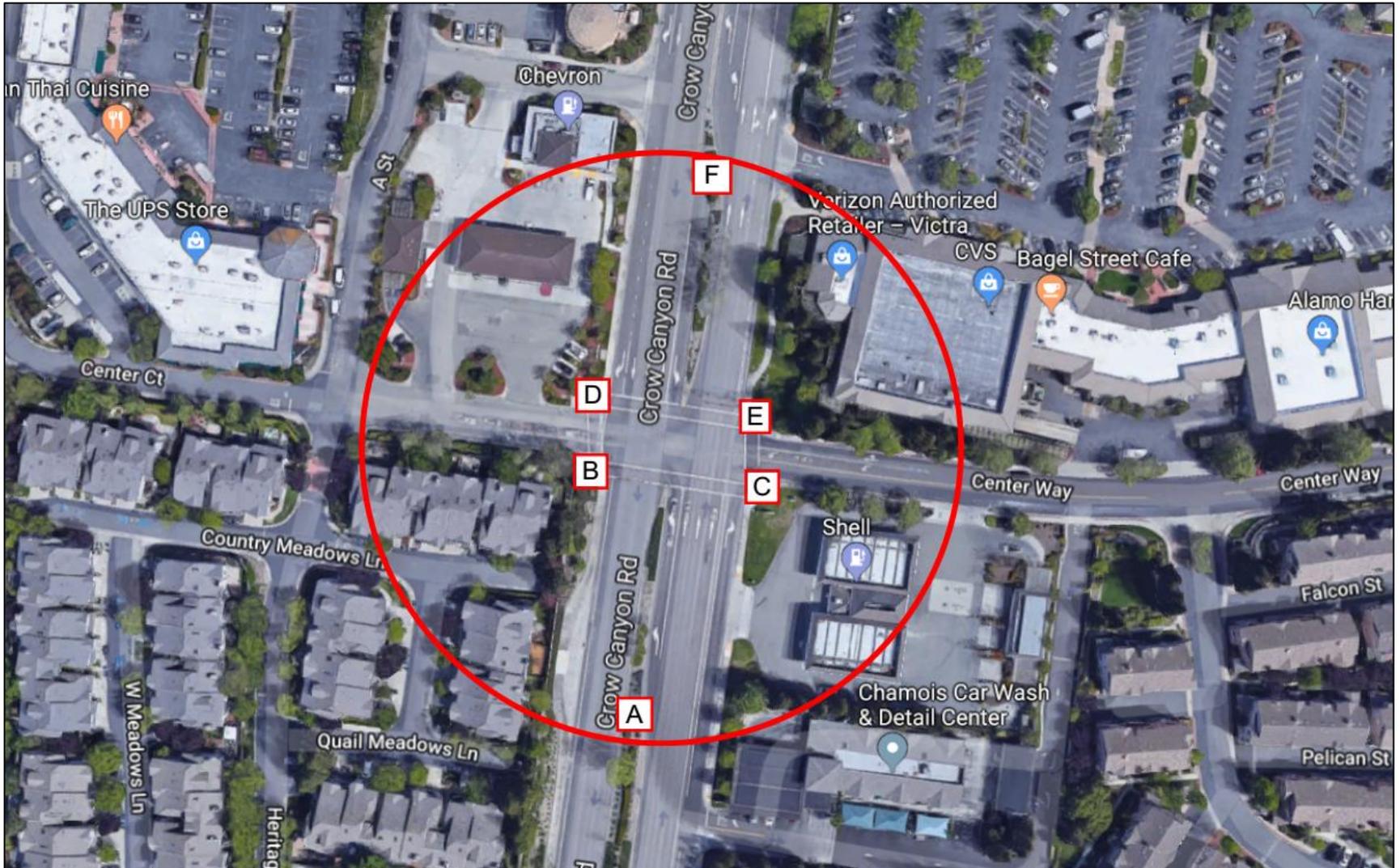
Hypothetical:

1. Applicant submits LUP application to install small cell in the public right-of-way at intersection of Crow Canyon Road and Center Way
2. Technical service objective: relieve network congestion along Crow Canyon near Tassajara Crossing

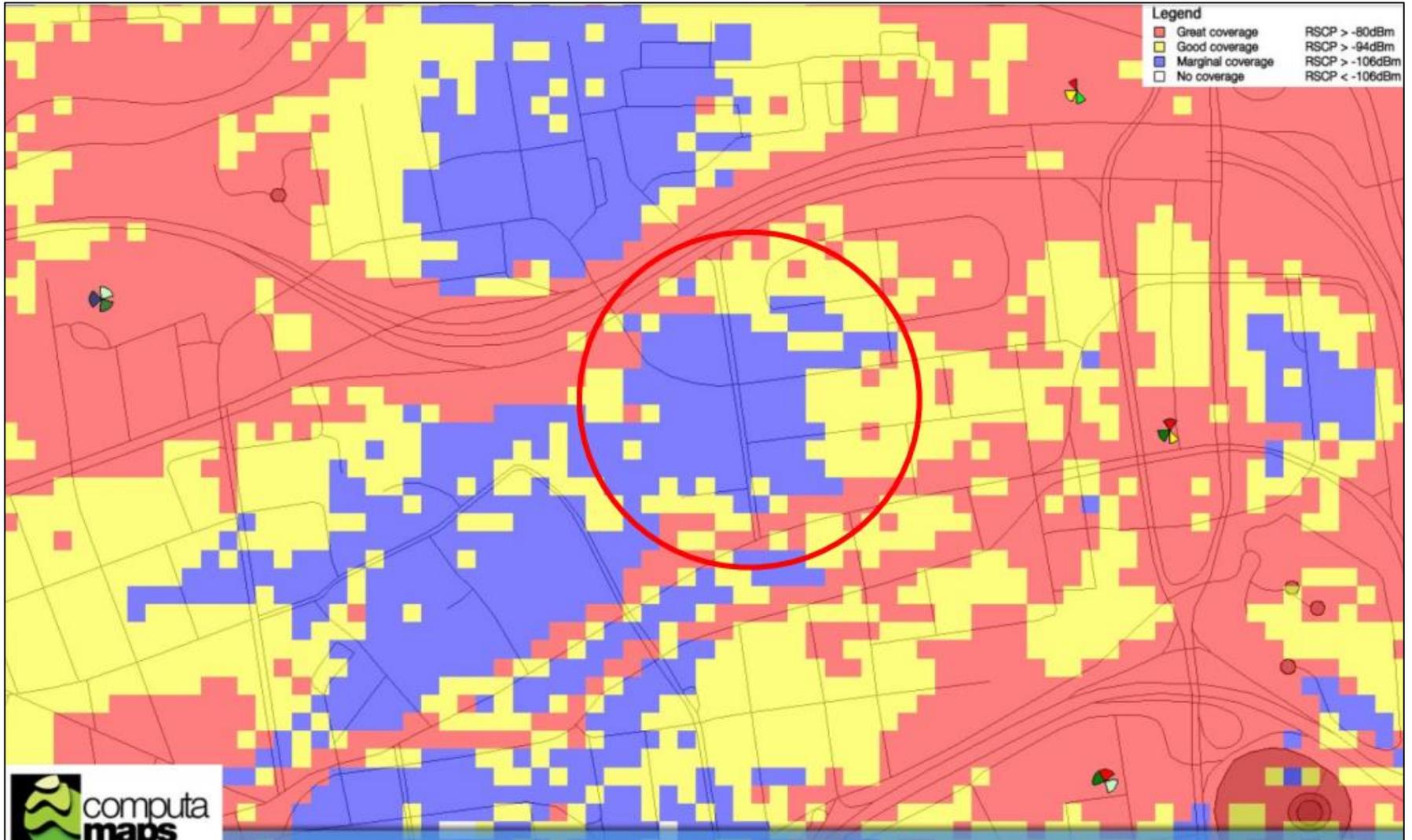
Questions:

1. Should the application be approved?
2. What would be an appropriate basis for a denial, if any?

Applicant Search Ring



Technical Service Objective



A

B

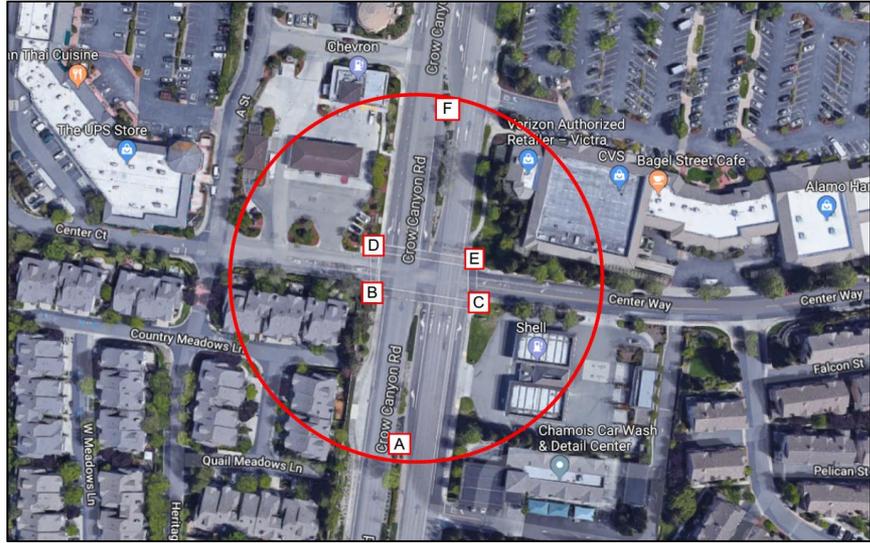
D

E

C

F

Applicant proposes location "B"



Location Preference Analysis

Rule: “. . . [T]he approval authority will take into account whether any more preferred locations are technically feasible and potentially available.” DMC § 32-70.7.a.

Proposed Location:

- existing/replacement structure in the public right-of-way
- Crow Canyon Rd. – major arterial (see General Plan Ch. 4)
- distance from nearest residence: 40 ft.

Alternative Locations:

- all located on Crow Canyon Rd.
- all existing/replacement structure in the public right-of-way
- distance from nearest residence:
 - A – 90 ft.
 - C – 175 ft.
 - D – 80 ft.
 - E – 185 ft.
 - F – 290 ft.

Approve or Deny?

- **Apply “least intrusive means” framework**
 - request to investigate more-preferred alternatives
 - applicant provides technical justification
 - if Location “F” is technically feasible, administrative-level approval
 - if not, move on to the next most-preferred location
- **Applicant refuses? Technical justification insufficient?**
 - basis for denial
 - see required findings §§ 32-70.9.a.4-5

What about Concealment?

Private property facilities



Context matters:

Some facilities may be a right thing in the wrong location

These are well-designed sites in context with the environment



Buildings and existing structures typically offer better concealment opportunities and reduce new construction



Completely stealth facilities:

Either no visible change at all or so well hidden the observer cannot even see the effort to hide the equipment





Faux-trees (monopines, monopalms, etc.) are not the only concealment options for freestanding facilities



Cell sites concealed as public art

Staff Recommendation

1. Introduce Ordinance No. 2018-07 subject to amended location preferences in § 32-70.7.a and return for second reading on August 21, 2018
2. Adopt Resolution No. 75-2018