ZONING EXAMINER'S DECISION

CITY OF TUCSON
ZONING EXAMINER'S OFFICE

April 26, 2018

Christine Tucker (On behalf of Verizon Wireless)
Insite Inc.
2035 E. Gondola Lane
Gilbert, AZ 85234

SUBJECT: Special Exception Land Use
SE-18-04 Verizon – 1st Avenue, C-1 (Ward 3)
Public Hearing: April 19, 2018

Dear Ms. Tucker,

SPECIAL EXCEPTION LAND USE REQUEST

Pursuant to the City of Tucson's Unified Development Code (UDC) and the Zoning Examiner's Rules of Procedures (Resolution No. 9428), this letter constitutes written notification of the Zoning Examiner's findings and decision for the special exception case **SE-18-04 Verizon – 1st Avenue.**

PUBLIC HEARING

On April 19, 2018, a public hearing was held on this special exception land use request at City Hall, 225 West Alameda, Tucson, Arizona pursuant to UDC Section 3.4.3 (Zoning Examiner's Special Exception Procedure). At the April 19th Zoning Examiner's public meeting the Planning and Development Services Department (PDSD) staff reported that there were zero (0) written approvals and zero (0) written protests at that time . There were no speakers other than the applicant.

In the testimony, the applicant described the overall need for this site by stating that there is a large gap in the service coverage for this area and that this site will significantly improve the area's service coverage. She also said that the tower was originally designed to be 75' high and that they chose to reduce it to the 50' height requested. In addition, she discussed how this wireless communication facility (WCF) is located behind a large retail center building and that they are locating it in an area next to the trash enclosure and extending the existing masonry walls so as blend with the existing area. She pointed out that this new site is visually screened from the adjacent neighbors to the south and to the west by a large amount of existing trees and landscaping and the center itself screens this new WCF from the neighbors to the north. She also stated that this new site will not remove any existing parking spaces.

I asked the applicant if she agreed with the recommended special conditions. She responded that she agreed with the recommended special conditions. I also asked her to explain the two (2) submitted service coverage maps for the area. She explained how one map shows the 'before' condition and the 2nd map shows the 'after' condition once this new site is installed. She went on to explain the colors shown on the maps in order to explain how the new proposed WCF will help improve the service coverage in this area.

FINDINGS

This is a request by Christine Tucker of Insite Inc. on behalf of Verizon Wireless, for approval of a wireless communication facility (WCF).

The applicant requests special exception approval for the placement of a 50-foot high wireless communications facility disguised as a palm tree (monopalm) with associated ground equipment on a C-1 zoned parcel with commercial retail uses.

The special exception site is located approximately 200 feet north of Roger Road and 400 feet east of 1st Avenue (see Case Location Map).

The proposed monopole will include four antennas per sector with three sectors for a total of twelve antennas. The applicant has submitted a photo-simulation of the monopalm showing that the antennas will be concealed by the artificial branches of the monopalm. The applicant has also provided radio frequency maps showing the gap in wireless communication coverage in the area and how this gap will be resolved by the proposed facility. The nearest residential developments are a single-family home subdivision, zoned R-2, located approximately 220 feet to the east, and an apartment complex, zoned O-3, approximately 300 feet to the south across Roger Road. The monopalm will be visible from the surrounding residential neighborhoods, commercial developments, and from nearby streets.

The facility will be placed within a 272 square foot lease area in the northeastern part of the subject parcel near the south side of an existing retail grocery store. The site is recently developed with retail commercial uses.

Ground equipment will be housed inside equipment cabinets, located on a concrete slab, and screened by a 9-foot masonry wall. The proposal does not include a backup generator. Staff recommends the masonry screen wall surrounding the lease area be painted in neutral desert colors to match the commercial buildings on the site. Staff further recommends that any graffiti be removed within 72 hours of observation.

Staff acknowledges that the proposed WCF will help improve telecom services to the established neighborhoods and businesses in the area. The proposed WCF is setback 220 feet from the nearest residential unit to the east, 500 feet from nearby

streets to the south and west, and is partially screened from adjacent developments by existing on-site commercial buildings.

In terms of wireless communication facilities, a stealth application is one that disguises the appearance of the pole and antennas to look like an element of the built or natural landscape, which could typically occur at the chosen location. A stealth application should be as close as possible in scale and appearance to the object it is disguised as, with no obvious unnatural elements. The success of a stealth application is dependent on the ability of the design and construction of the cellular site to fit into its surroundings to such a degree that it is not noticeable. Scale and proportion, site design, color, and materials, are particularly important in stealth applications insofar as they contribute, or do not contribute, to the ability of the facility to be as unobtrusive as possible. To ensure a successful stealth monopalm at this location, the following standards should be incorporated into the conditions:

- The monopalm shall not exceed 50 feet in height at top of fronds;
- The pole shall be covered with cladding (bark) from the pineapple to bottom of pole, and painted to resemble a live palm;
- There shall be a minimum of 55 fronds ranging in length from seven (7) feet to ten (10) feet and placed to extend above, below and between antenna panels;
- Replacement of lost/damaged fronts to be completed within ten working days of observation and fronds shall be colored to match live fronds as closely as possible;
- All cables shall be run inside the pole, with no foot pegs or other visible appurtenances;
- All wires, wire ports and equipment shall be concealed behind the antennas and fronds;
- Antenna panels shall be colored with a light/shade pattern to better camouflage them;
- Ground equipment to be screened by a masonry wall which will extend and match the existing trash enclosure wall.
- Any future collocated antennas shall be camouflaged and concealed by artificial dead frond skirt as shown on the PDP.

USE-SPECIFIC STANDARDS

The applicant's proposal requires approval as a Zoning Examiner Special Exception Procedure and must meet the Use-Specific Standards of *UDC* Sections 4.9.13.O and 4.9.4.I.2, .3, and .6.a. The Zoning Examiner may forward the request to the Design Review Board for design review and recommendation. Use Specific Standards specified in the *Unified Development Code* Section 4.9.I.6.a include the following items (in *italics*). A response follows each Use Specific Standard:

1. *The antennas are mounted on a new tower and the tower and antennas are concealed or disguised, or the antennas are collocated on an existing structure.*

   The new wireless facility is a disguised as a palm tree (a stealth monopalm) and located behind the existing retail center.

2. *The tower and antennas are architecturally and/or environmentally compatible with the surrounding structure(s) and general area.*

   The proposed artificial palm is an effective method to mitigate visual impacts of the wireless facility on surrounding development. The associated ground equipment is to be located inside cabinets within a compound screened by a 9-foot masonry wall.

3. *The new tower is setback at least two times the height of the structure from the boundary of any property zoned residential or office.*

   The 50-foot monopalm is located approximately 220 feet from the nearest residentially zoned property, and approximately 300 feet from the nearest office zoned property.

4. *The tower and antennas are fifty (50) feet or less in height.*

   The proposal is for an artificial palm of fifty (50) feet in height to the top of fronds. This Zoning Examiner's and Staff's recommendation is that the overall height of the monopalm be no more than fifty (50) feet.

This Zoning Examiner and Staff find the proposal to be in compliance with the *UDC* Use-Specific Standards.

FEDERAL REGULATIONS

Because this Special Exception application involves a wireless communication request, the Zoning Examiner's consideration of the application is impacted by the application of federal laws specific to wireless communications. While federal law does not entirely preempt local decision-making authority based on legitimate zoning requirements, such as community aesthetics and compliance with stealthing requirements, it does impose the following limitations:

1) The decision on the application must occur within the "shot clock" period as provided under federal law, which for this type of application is 150 days. In this case, the application was accepted on February 13, 2018 and the "shot clock" period will expire on July 13, 2018. If a decision is not rendered within the "shot clock" period, the review and consideration process is presumed to be unreasonable and affords the applicant the

opportunity to file a lawsuit. If sued, the City would need to prove that it acted "reasonably" when it failed to act within the established "shot clock" period. This means that the Zoning Examiner should come to a decision on this application within two weeks of the public hearing.

2) The evaluation of the request cannot include consideration of potential environmental or health effects of radio-frequency (RF) emissions where, as here, the facility will comply with FCC regulations and standard on such emissions.

3) The decision on the application cannot unreasonably discriminate among providers of functionally equivalent services. A denial may be deemed to be "unreasonable discrimination" if the applicant is similarly situated to other prior applicants and the proposed facility is no more intrusive than other prior applications that have been approved.

4) The decision may not have the effect of prohibiting the provision of wireless services, or of causing a significant gap in the applying provider's coverage. In this context, the relevant issues are: (1) whether the applicant has shown a significant gap in service coverage; and (2) whether the proposal to fill this gap is the least intrusive means of doing so, or whether there are alternative sites that would fill the gap.

5) In the event of a denial, that decision and its reasons must be delivered to the applicant in writing, and must be supported by substantial evidence.

Given these constraints, the Zoning Examiner's consideration and decision on this application should focus on whether the applicant has demonstrated a significant coverage gap; whether that gap could be addressed through an installation at an alternative site; and whether the proposed concealment/stealthing measures are sufficient to meet the City's requirements. The Zoning Examiner should also consider how this application compares to other prior applications for similar facilities. In the event of a denial, the reasons for the denial must be stated so they can be incorporated into a written decision and captured in the meeting minutes.

FINDINGS

UDC Sec. 3.4.5 Findings - Below are the findings required for the review of a Zoning Examiner's Special Exception.

1. Meets the standards applied by all adopted codes and regulations for that type of land use

The PDP indicates compliance with the Use Specific Standards (USS) of the UDC's Sections 4.9.13.O and 4.9.4.I.2, 3 and 6a.

The new WTF tower and antenna will be disguised as a palm tree; the ground equipment enclosure will be designed to be compatible with existing architecture; the tower's setback will be over twice the height from the boundary of residentially zoned property; and the WTF height will be no greater than 50' feet. The current application can meet the above standards.

2. Does not adversely affect land use or surrounding neighborhoods or that such adverse effects can be substantially mitigated through the use of additional conditions

The design of the WTF as a monopalm has been a common stealth technique to reduce the visual impact. The closest setback is about 220' feet from nearby residential property. The ground equipment is designed to extend and match the existing trash enclosure walls in order to have a similar texture and color to the existing buildings on the subject property.

3. Provided for adequate and efficient vehicular and pedestrian access and circulation and vehicular parking

No road improvements are proposed with the project. Vehicular access to the WCF will be through the existing curb cut along 1st Avenue. According to the *Major Streets and Routes Plan*, 1st Avenue is designated as an arterial street with a right-of-way width of 120 feet.

4. Can be adequately and efficiently served by public facilities and services

The PDP was evaluated by PDSD, Environmental Services Department, Department of Transportation and Water Department staffs and none expressed concerns about facilities or services. There was no evidence or testimony presented during the public hearing or received in writing that suggested public facilities are affected in a negative manner. The preliminary development plan and special conditions sufficiently respond to these issues.

5. Complies with the General Plan and any applicable neighborhood plans

Land use policy direction for this area is provided by the *Northside Area Plan (NSAP)* and *Plan Tucson*. Although the *NSAP* does not have specific language for wireless communication facilities, it does support commercial development at this location.

Plan Tucson identifies this area in the Future Growth Scenario Map as an existing neighborhood and supports new services and amenities that contribute further to neighborhood stability. Policy LT28.1.2 requires that, if possible, wireless communication facilities be located, installed and maintained to minimize visual impacts and preserve views. The applicant states that the proposed wireless communication facility will help improve telecommunication services in the surrounding neighborhoods. *Plan Tucson* policies protect established residential neighborhoods by supporting compatible development, including non-residential uses, where the scale and intensity of use is compatible with adjacent uses. Policy LT28.1.3 calls for improving the appearance of above-ground utilities and

structures and extending access to high-tech wireless communication facilities throughout the city.

The proposal in general compliance with *Northside Area Plan* and *Plan Tucson*, and does not require a plan amendment. The plan policies generally support new cell tower proposals when designed to minimize visual impacts on surrounding neighborhoods and when buffering is provided. The ground lease area is 16 feet by 17 feet with ground level equipment that will be screened from view by a 9-foot high masonry wall textured and painted to match nearby existing walls of the adjacent commercial retail building. The wireless communication facility will be set back from Roger Road by approximately 200 feet and from 1st Avenue by approximately 400 feet.

The Pima Association of Governments - Transportation Planning Division (PAG-TPD) estimates that the proposed development will not generate additional measurable vehicle trips per day.

Field inspection by staff indicates there are currently no billboards on the rezoning site.

APPEAL

The Zoning Examiner's decision may be appealed to Mayor and Council pursuant to UDC Section 3.4.3.I. A notice of intent to appeal the Zoning Examiner's decision must be filed with the City Clerk, 255 West Alameda, Tucson, Arizona, 85701 by a party of record in accordance with UDC Section 3.9.2 within fourteen days of the effective date of the Zoning Examiner's decision with a copy delivered to PDSD.

The complete appeal materials must be filed with the City Clerk within 30 days of the effective date of this decision letter.

A copy of this decision letter can be obtained from either the Planning and Development Services Department (791-5550) or the City Clerk.

CONCLUSION

The Zoning Examiner has reviewed the evidence provided by Staff and the testimony presented at the public hearing and finds the proposed tower to be in compliance with the UDC Use-Specific Standards.

The proposal is in compliance with the performance criteria for a wireless communication facility. The special exception request is consistent with policy direction in the *Northside Area Plan* and *Plan Tucson*, which support development designed to be compatible with and sensitive to surrounding land uses. The proposed WCF has been designed to blend in with the surroundings

and does not conflict with plan policies. Subject to compliance with the attached special conditions, approval of the requested special exception is appropriate.

DECISION

The Zoning Examiner's decision is to **approve** the special exception request subject to the attached special conditions.

Sincerely,

Steven C. Shell
Zoning Examiner

ATTACHMENTS:

Case Location & Special Exception Case Map

cc: City of Tucson Mayor and Council

SE-18-04 Verizon - 1st Avenue

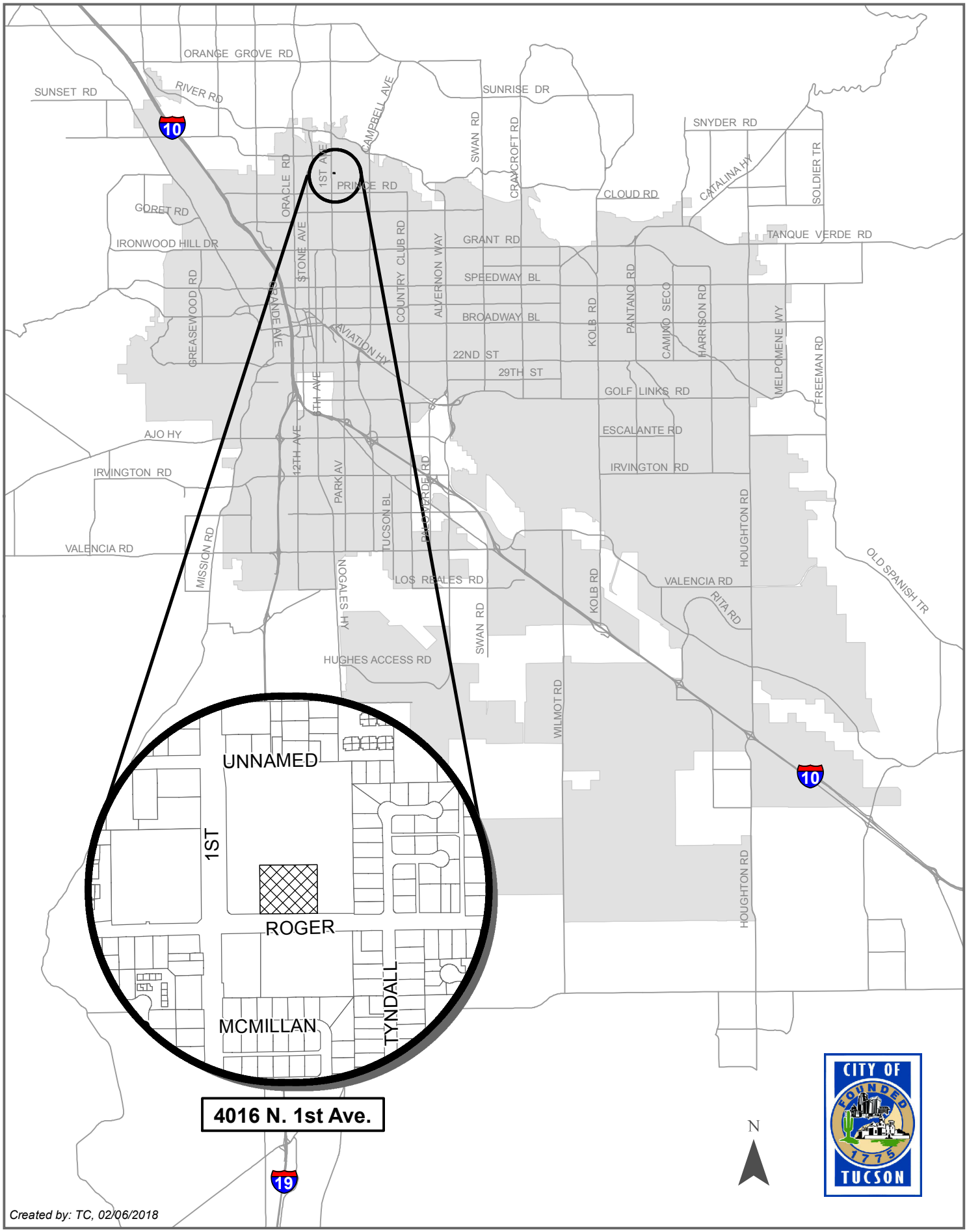
Area of Special Exception Request

Address: 4016 N. 1st Ave.
Base Map: Twp. 13S R. 14E Sec. 19
Ward: 3

N

Feet
0 100 200
1 inch = 200 feet

SE-18-04 Verizon - 1st Avenue



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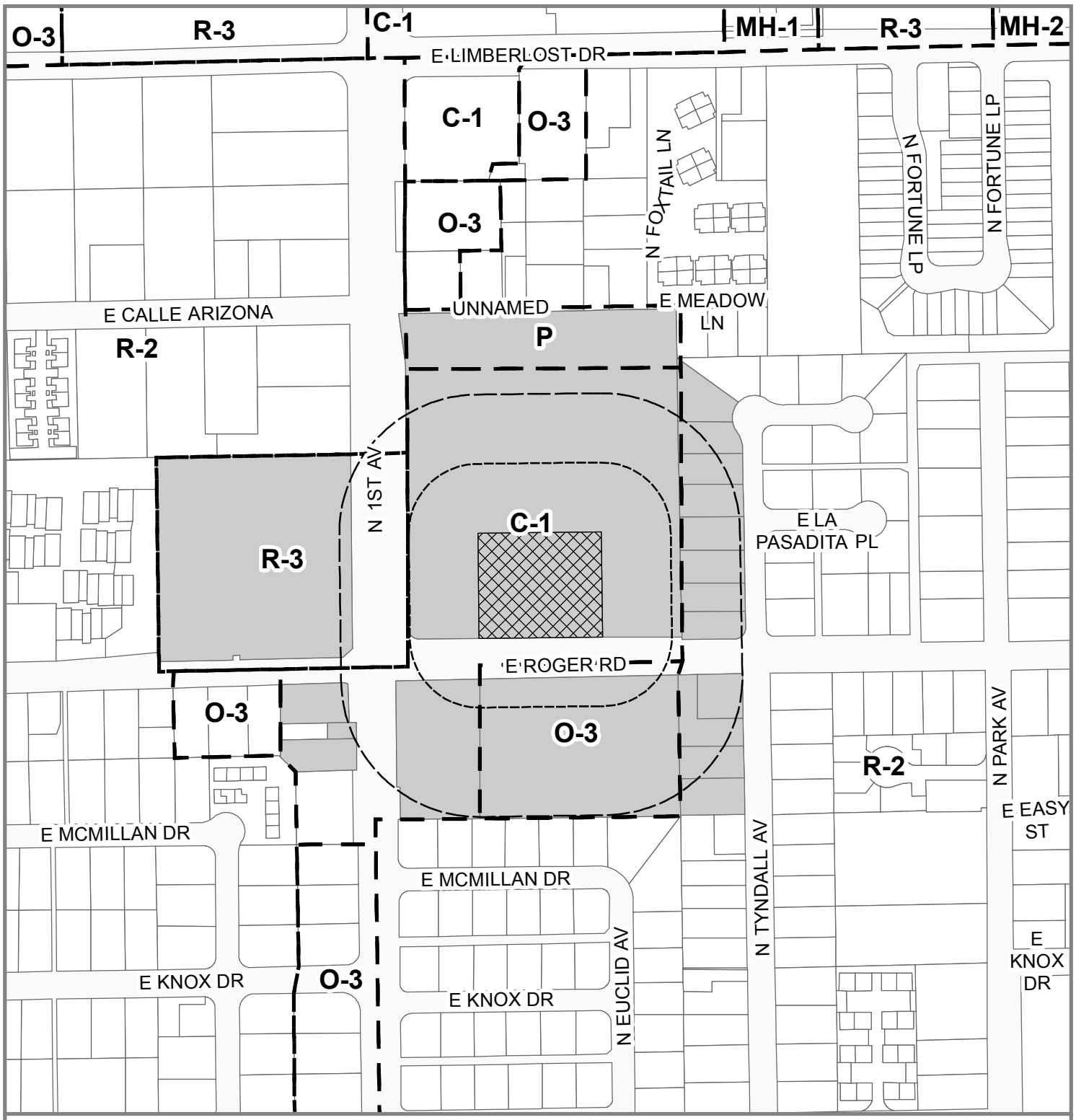
SE-18-04
4016 N. 1st Ave.



Subject Property

Protest Area (150-foot Radius)

Notification Area (300-foot Radius)

Zone Boundaries

Properties Notified

Address: 4016 N 1st Ave
Base Maps: Twp.13S Range14E Sec. 19
Ward: 3

N

Feet
0 150 300
1 inch = 300 feet

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