



Zoning Examiner

Preliminary Report

November 16, 2023

Declan Murphy

Coal Creek Consulting

8283 Hayden Road, Suite 258

Scottsdale, AZ 85258

SUBJECT: TP-ENT-0823-00033 T-Mobile – Shannon Road, (MCSE) C-1 (Ward 1)

Public Hearing: November 9, 2023

Dear Mr. Murphy:

Pursuant to the City of Tucson Unified Development Code and the Zoning Examiner's Rules and Procedures (Resolution No. 9428), this letter constitutes written notification of the Zoning Examiner's summary of findings for rezoning case TP-ENT-0823-00033 T-Mobile – Shannon Road, (MCSE) C-1 (Ward 1).

At the expiration of 14 days of the conclusion of the public hearing, the Zoning Examiner's Report to the Mayor and Council (including background information, public hearing summary, findings of fact, conclusion, recommendation, and public hearing minutes) shall be filed with the City Manager. A copy of that report can be obtained from the Planning and Development Services Department (791-5550) or the City Clerk.

If you or any party believes that the Zoning Examiner's recommendation is based on errors of procedure or fact, a written request to the Zoning Examiner for review and reconsideration may be made within 14 days of the conclusion of the public hearing.

The public hearing held by the Zoning Examiner shall constitute the public hearing by the Mayor and Council. However, any person may request a new public hearing before the Mayor and Council. A request for a new public hearing must be filed in writing with the City Clerk within 14 days of the close of the Zoning Examiner's public hearing.

TP-ENT-0823-00033 T-Mobile – Shannon Road, (MCSE) C-1 (Ward 1)



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SUMMARY OF FINDINGS

This is a request by Coal Creek Consulting on behalf of T-Mobile, for approval of a wireless communication facility (WCF). The special exception site is located at 190 N Shannon Road, approximately 200 feet east of Shannon Road and 750 feet south of Anklam Road (see Case Location Map). The preliminary development plan (PDP) proposes a wireless communication tower with three sectors of antennas and with two antennas per sector, for a total of six antenna panels, with no options for future colocation, constructed as a monopole with an overall height of 50 feet. The facility will be placed within an approximately 640-square foot (20 feet by 32 feet) lease area located within the perimeter wall of an existing TEP substation at 190 N Shannon Road. The proposed ground equipment, including the monopole, will be located within an area screened by an existing CMU substation wall topped by razor wire. Access is provided by a new door installed on the north wall of the substation, opening directly to the fenced equipment area inside the substation perimeter. No access is provided from the T-Mobile equipment area to the rest of the substation. Service access is by way of a new 12-foot utility and access easement along the west and north face of the substation wall (see PDP), sharing the existing substation road access to Shannon Road.

A communications use of this type in the C-1 zone is subject to Sections 4.9.13.O and 4.9.4.I.2, .3, and .8 of the *Unified Development Code (UDC)* and requires approval through a Mayor and Council Special Exception Procedure, in accordance with *UDC* Sec. 3.4.3, for a new tower less than two times the height from the nearest property zoned residential or office, and less than one mile from any existing tower unless documentation that no practical alternative exists. Documentation provided by the Applicant indicates that no practical alternative exists, and the tower will be painted to minimize visual impacts. The tower will also be placed in a site containing an existing Utilities Distribution land use – the site is dominated by an existing TEP substation. One other 50-foot monopole communications tower is present on the site, but it does not provide opportunities for colocation.

The Mayor & Council Special Exception Procedure requires a public hearing before the Zoning Examiner, after which the Zoning Examiner forwards a recommendation to the Mayor and Council for a decision to grant the request with, or without, conditions or to deny the request. The Mayor and Council may also forward the request to the Design Review Board (DRB) for design review and recommendation.

Background Information

Existing Land Use: Utilities Distribution – a TEP substation and an existing 50-foot cell tower.



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Zoning Description:

C-1 (Commercial Zone): This zone provides for low-intensity, commercial and other uses that are compatible with adjacent residential uses. Residential and select other agriculture, civic, recreational, and utility uses may also be permitted that provide reasonable compatibility with adjoining residential uses.

Surrounding Zones and Land Uses:

North: Zoned O-3; Multifamily Residential South: Zoned C-1; Multifamily Residential East: Zoned C-1; Multifamily Residential West: Zoned C-1; Single-family Residential

Applicant's Request – The Applicant requests special exception approval for the placement of a 50-foot-high cellular communications monopole. The pole will be located in a parcel with existing cellular and electric transmission equipment. While this means it is in proximity to existing cell towers, those towers do not provide options for co-location to meet the bandwidth needs of this area as presented by the Applicant. The pole will be painted to minimize visual impacts, and the associated ground equipment area will be located inside the existing perimeter wall surrounding the substation.

Planning Considerations – Land use policy direction for this area is provided by the *Tumamoc Area Plan*, and *Plan Tucson*. No specific policy direction is provided for WCF's in the *Tumamoc Area Plan*. *Plan Tucson* identifies this area in the Future Growth Scenario Map as "Existing Neighborhoods" 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 proposed wireless communication facility will help improve telecom services in the area.

The special exception site is currently within a TEP Substation in the C-1 commercial zone. The site is located approximately 200 feet east of Shannon Road and 750 feet south of Anklam Road. The nearest residentially developed properties are the multifamily apartments north, east, and south of the project location.

The Applicant estimates that the proposed development will not generate additional measurable vehicle trips per day. ADOT and DTM have provided no comments concerning this development.

Design Considerations

Land Use Compatibility – The proposed monopole will not be designed to accommodate antennas for additional wireless carriers, keeping the overall height of the pole consistent with other



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towers on the site. The applicant states that collocating the antennas on the existing tower is not possible due to inadequate structural capacity to accommodate the necessary equipment. The tower will initially include two antennas per sector at the top of the monopole. The applicant states that the monopole will be of galvanized steel with all antennas, mounts, and associated visible equipment painted to match pole color to minimize visual impacts.

The Applicant has submitted photo-simulations of the monopole. The proposal is for a monopole rather than a stealth tree design, because there are no existing tall trees nearby to provide context, and because it will match the appearance of the rest of the utilities distribution and communications land uses already present. Cell tower location maps showing a gap in wireless coverage were also submitted with the special exception application materials. Staff acknowledges that the proposed WCF will help improve telecom services to the area.

The nearest residential use is between 25 and 50 feet away, or about half to equal the height of the proposed monopole.

The monopole and ground equipment will be placed within a 640 square foot lease area in the northeast corner of the electric substation perimeter wall. Ground equipment will be housed inside cabinets within an area secured by an 8-foot chain-link fence preventing access to the substation area outside of the T-Mobile lease area.

Road Improvements/Vehicular Access/Circulation – No road improvements are proposed with this project. Vehicular access to the wireless communications facility is by way of a new access and utility easement along the northern wall of the substation. From the shared entrance at Shannon Road.

Federal Regulations – Because this Special Exception application involves a request for a wireless communication facility, 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 September 5, 2023, and the “shot clock” period will expire on February 2, 2024. 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.



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2. The evaluation of the request cannot include consideration of potential environmental or health effects of radiofrequency (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 facility is designed and situated similarly to other previously approved facilities and is no more intrusive than those previously facilities.
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 recommendation 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/stealth 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 recommendation for denial, the reasons must be stated so they can be incorporated into a written decision and captured in the meeting minutes.

Use-Specific Standards – The applicant’s proposal requires approval as a Zoning Examiner Special Exception and must meet the Use-Specific Standards of *UDC* Sections 4.9.13.O and 4.9.4.I.2, .3, and .6. The Zoning Examiner shall render a decision to grant the use with or without conditions, or to deny the use. Below is the analysis of the performance criteria.

4.9.4.I.6

a.



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The following requires approval as a special exception in accordance with Section 3.4.3, *Zoning Examiner Special Exception Procedure*. The Zoning Examiner may forward the request to the Design Review Board (DRB) for design review and recommendation.

Wireless communication antennas, provided:

1. The tower or antennas are not permitted by other provisions of this Section.

The 50-foot utility pole is located 25 to 50 feet away from existing multifamily residential land use, necessitating a Mayor and Council special exception.

2. New towers require a minimum separation of one mile from any existing tower, regardless of ownership, unless documentation establishes that no practical alternative exists.

The nearest existing wireless communications facilities are located within the project parcel. However, there is inadequate structural capacity to collocate antennas on the existing poles. There were no other vertical objects in the area sufficient to locate the antennas.

3. All appropriate measures shall be taken to conceal or disguise the tower and antenna from external view.

The utility pole will be painted to match existing communications towers on the site to maintain a unified design aesthetic.

4. All appropriate measures shall be taken to reduce the negative proliferation of visible towers and antennae by the collocation of new antennae on existing towers or with the facilities of other providers which are located or planned for development within the proposed service area.

The utility pole will be co-located with an electric substation, where the utilities and communications land use create an established area for similar non-residential uses. This limits the proliferation of towers to the existing site.

5. Notice shall be provided to all agents designated at least 15 days prior to the date of the public hearing before the Zoning Examiner.



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All policies of the Mayor and Council Special Exception Process shall be followed accordingly.

The Zoning Examiner finds the proposal to be in compliance with the *UDC's* Use-Specific Standards.

November 9, 2023, Zoning Examiner Hearing

The Applicant spoke in support of the requested rezoning at the November 9, 2023, Zoning Examiner hearing. No other person spoke.

As of the date of the Zoning Examiner hearing, there were no (0) written approvals and no (0) written protests.

Conclusion – The proposal is in compliance with the performance criteria for a wireless communication facility. The special exception request is consistent with policy direction in *Plan Tucson*, which supports development designed to be compatible with and sensitive to surrounding land uses. Despite its proximity to multi-family residential land use, the project location is consistent with the surrounding context and contains new communications infrastructure to an already substantially disturbed site with similar heights. Subject to compliance with the preliminary conditions proposed by PDSD, approval of the requested special exception is appropriate.

Sincerely,

John Iurino

Zoning Examiner

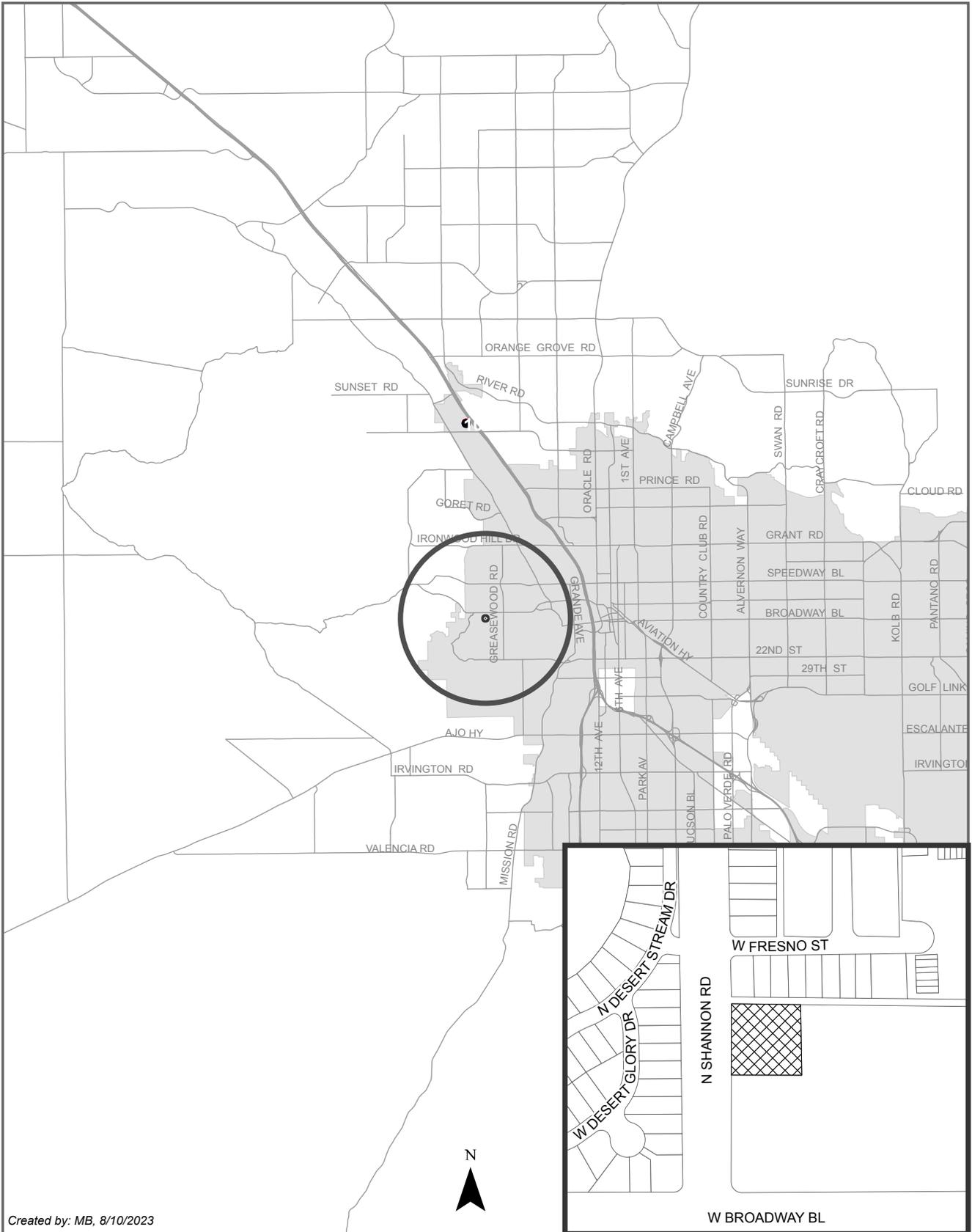
ATTACHMENTS:

Case Location Map

Rezoning Case Map

Cc: Mayor and Council

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 Area of Special Exception Request

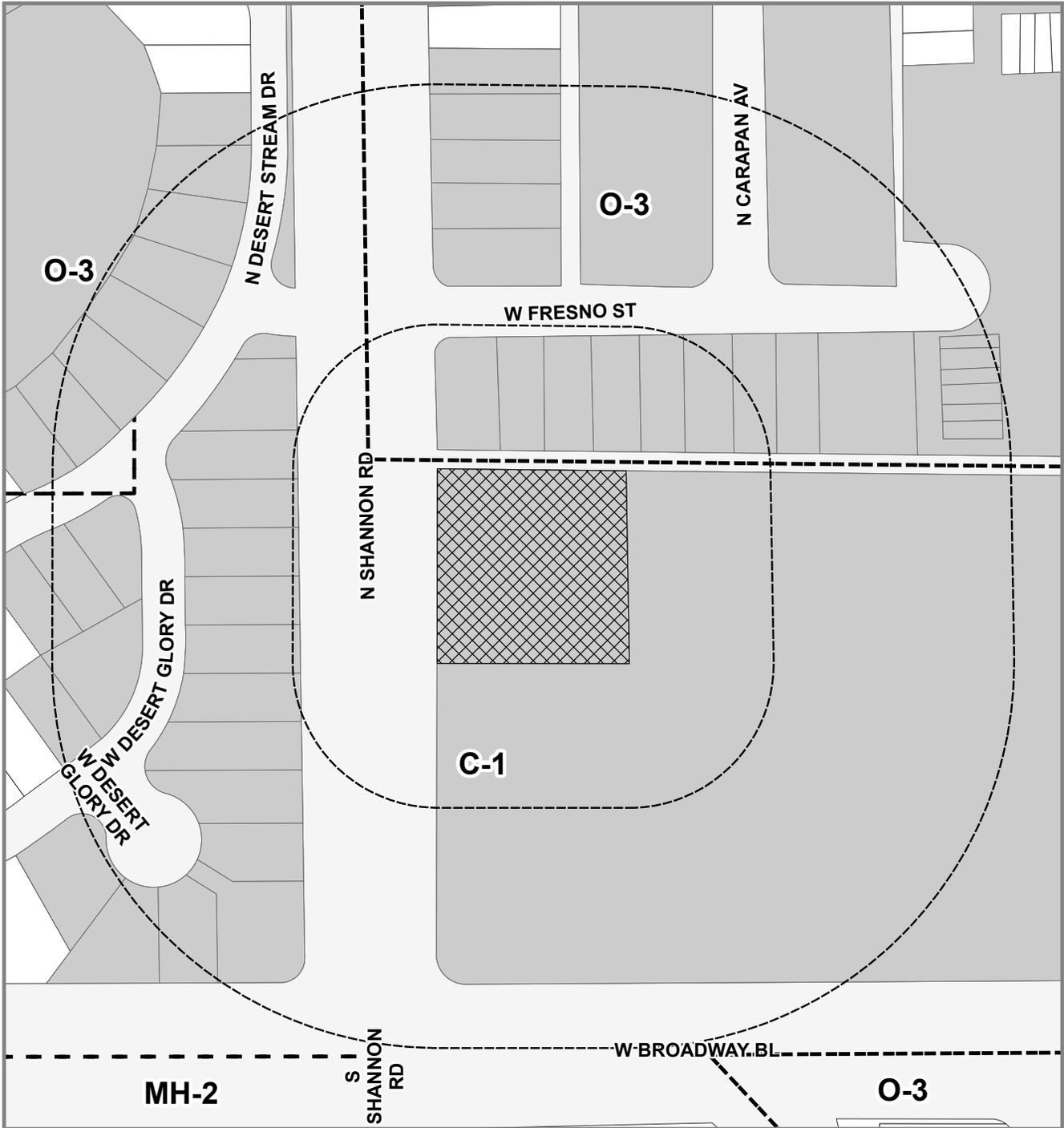
Address: 190 N SHANNON RD
Base Maps: Twp. 1403 Range 1302 Sec. 09
Ward(s): 1

2020 Aerial
Created by: MB, 8/10/2023

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Feet
1:1,714

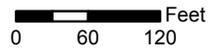


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-  Area of Special Exception Request
-  Properties Notified
-  Zone Boundaries
-  400' Notification Area
-  Protest Area (150 ft. Radius)

Address: 190 N SHANNON RD
 Base Maps: Twp. 1403 Range 1302 Sec. 09
 Ward(s): 1



1:1,714