



THE PLANNING & DEVELOPMENT DEPARTMENT APPEAL TO CITY PLANNING COMMISSION

Complete this form if you are appealing an **Administrative** decision to City Planning Commission.

APPELLANT CONTACT INFORMATION:

Appellants Name: SALLY MADDOCKS Telephone: 404 909 1684
Address: 4807 AVONDALE CIRCLE City COLORADO SPRINGS
State: CO Zip Code: 80917 E-mail: Sallycmaddocks@gmail.com

PROJECT INFORMATION:

Project Name: COL02266 MAIZELAND AND MURRAY - VERTICAL BRIDGE
Site Address: 0 36-13-66
Type of Application being appealed: Cm2
Include all file numbers associated with application: AR Cm2 19-00124 (TSN 633630003)
Project Planner's Name: RACHEL TEIXEIRA
Hearing Date: 15 AUG 2019 Item Number on Agenda: NA (not set yet)

YOUR APPEAL SUBMITTAL SHOULD INCLUDE:

1. Completed Application
2. \$176 check payable to the City of Colorado Springs
3. Appeal Statement.
 - See page 2 for appeal statement requirements.

Submit all 3 items above to the **Land Use Review office (30 S Nevada, Suite 105, Colorado Springs, CO 80903)**. Appeals are accepted for 10 days after a decision has been made. Submittals must be received no later than 5pm on the due date of the appeal. Incomplete submittals and / or submittals received after 5pm or outside of the 10 day window will not be accepted. If the due date for the submittal falls on a weekend or federal holiday, the deadline is extended to the following business day.

If you would like additional assistance with this application or would like to speak with the neighborhood development outreach specialist, contact Katie Sunderlin at sunderka@springsgov.com (719) 385-5773.

APPELLANT AUTHORIZATION:

The signature(s) below certifies that I (we) is(are) the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I(we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval.

Signature of Appellant

Last Modified: 5/31/2018

29 JULY 2019
Date

THE APPEAL STATEMENT SHOULD INCLUDE THE FOLLOWING

- If you are appealing a decision made Administratively the following should be included in your appeal statement:
 1. Verbiage that includes justification of City Code 7.5.906.A.4
 - i. Identify the explicit ordinance provisions which are in dispute.
 - ii. Show that the administrative decision is incorrect because of one or more of the following:
 1. It was against the express language of this zoning ordinance, or
 2. It was against the express intent of this zoning ordinance, or
 3. It is unreasonable, or
 4. It is erroneous, or
 5. It is clearly contrary to law.
 - iii. Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.

<u>CITY AUTHORIZATION:</u>	
Payment: \$ <u>176.00</u>	Date Application Accepted: <u>07/29/2019</u>
Receipt No: <u>34430</u>	Appeal Statement: <u>✓</u>
Intake Staff: <u>RACHEL</u>	Completed Form: <u>✓</u>
Assigned to: <u>RACHEL</u>	



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
Land Use Review Division

July 22, 2019

John Heiberger
Kimley-Horn & Associates
2 North Nevada Avenue, Ste. 300
Colorado Springs, CO 80903

Re: Approval Letter for COL02266 Maizeland & Murray – Vertical Bridge

File Number: AR CM2 19-00124 (TSN 6336300003)

Dear Mr. Heiberger,

City Planning and Development administratively approved the above-mentioned telecommunications development for the COL02266 Maizeland & Murray project. This COL02266 Maizeland and Murray CMRS Development Plan project allows for the modification of the existing 99'-3" monopole tower to bring the tower up to code. The development will also provide for the installation of an equipment shelter for carrier equipment and generator for back-up. This approval is subject to the following conditions:

1. Development must conform completely to the approved development plan.
2. The building architecture must substantially comply with the elevation drawings.

This existing 99'-3" cellular tower was built in 1972 per the El Paso County Tax Assessor, and is considered to have the Conditional Use per *Nonconforming Uses and Conditional Uses* - Section 7.5.1203.H of the City's Zoning Code. The code section states: "A preexisting, legal nonconforming use which would require the approval of a conditional use in its zone district shall be presumed to have the required conditional use approval. Modifications to the structure or site shall be processed as either a minor or major amendment or modification to a conditional use development plan in accord with part 7 of this article." The project meets the City requirements for a conditional use major development plan amendment.

The Federal Communications Commission (FCC) regulates the review of wireless telecommunication applications pursuant to the Telecommunications Act of 1996 and the Middle Class Tax Relief and Job Creation Act Act of 2012 through the federal regulatory process. There are no substantial changes from the existing cellular tower to the proposed cellular tower as approved.

Please attach one copy of the approved amended development plan set to each set of construction drawings submitted to the Regional Building Department in conjunction with the building permit application. A Certificate of Occupancy will not be issued for the development until all private and public improvements shown on the plan are completed or financially secured and the appeal period has expired.

This development plan approval will expire six (6) years from the approval date unless a building permit is issued for the construction of the project. If any changes to the approved site or building design become necessary prior to, or during construction, an amended development plan will need to be submitted for City Planning review and approval.

IMPORTANT: IF YOU DO NOT AGREE WITH A DECISION OF THE PLANNER AND WISH TO APPEAL THAT DECISION YOU MUST DO SO BY FILING AN APPEAL APPLICATION WITH CITY PLANNING'S OFFICE NO LATER THAN TEN (10) DAYS AFTER THE DATE OF THIS DECISION.

Please contact me at 719-385-5368, if there are any questions.

Sincerely,
Rachel Teixeira
Planner II

cc: File No. AR CM2 19-00124 (TSN 6336300003)
COL02266 Maizeland & Murray/Vertical Bridge Development

Executive Summary- Appeal COL02266 Maizeland & Murray Vertical Bridge

Attached is the full appeal letter outlining express language in Federal Law, Federal Regulation and Colorado Springs City Code indicating the right and the responsibility of the City of Colorado Springs to deny this development project.

- The approval letter asserts the use of the current tower is legal non-conforming use but neither the city nor the developer has produced any evidence of legal establishment.

- If the city can prove legal non-conforming status, Colorado Springs City Code expressly forbids this modification, as it is an enlargement to a structure housing a non-conforming use.

- This tower does not comply with setback standards from residential properties. Code requires five times the height of the tower, yet this 99'3" tower will be 76' from the nearest residential property and within the required 496' from approximately 20 residential properties.

- The city failed to follow the prescribed process as outlined in the CMRS section of city code by administratively approving the project. This type of development project is required to go to Planning Commission.

- The approval letter states that the proposed tower modification includes "no substantial changes." This assertion has no objective support. The proposal outlines significant changes to the tower site and the tower itself. The modifications are expressly against city code and should be objectively labeled "substantial changes."

-The benefits to the greater public do not outweigh the cost to the neighborhood in the form of real estate value and their ability to utilize and enjoy their own properties. More than 280 petition signatures indicate strong neighborhood opposition to this project.

-Please find all supporting evidence including citations to the Telecommunications Act of 1996, The Middle Class Tax Relief and Job Creation Act of 2012 and Colorado Springs City Code in the following pages.

Thank you for your time.



Sally Maddocks
4807 Avondale Circle

The intent of this appeal document is to outline the US Federal Regulations and Colorado Springs City Code as they pertain to this cell tower modification construction as proposed by Vertical Bridge. **The express language as well as the intent of the applicable regulations and city code distinctly indicate this construction must be denied by the city.** Please take the time to carefully consider this analysis.

Before looking at the disputed statements and applicable laws, we must establish the baseline Federal Regulations and Colorado Springs City Code that all parties agree with. Firstly, Section 704 of the Telecommunications Act of 1996 spells out explicitly that **cities are permitted to make decisions based on their local code.** *“Nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.”* There are exceptions that do not apply to this case. The full text is contained at the end of this letter for review as desired. Denied applications must only be accompanied by a written explanation “Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.” The City of Colorado Springs is completely within this Federal Regulation to deny this tower and quoting local city code in writing is a the only requirement for the city to accompany the denied application.

The next undisputed fact is that the **land parcel where the cell tower is proposed is residential (R1-6000 AO).** Towers (to include cell towers) are not specifically permitted on residentially zoned land in the city of Colorado Springs (Section 7.3.1 Residential Districts).

Colorado Springs City Code further expounds on CMRS tower in Section 7.4.6 Commercial Radio Service Regulations. “7.4.601: PURPOSE: The purpose of this part is to set forth a regulatory framework in which low power telecommunication facilities may be constructed or located within Colorado Springs **without substantially adversely impacting the visual integrity of the City, its neighborhoods and important view corridors.**” This paragraph concludes with the statement **“These regulations also strive to provide the public an opportunity to comment on the visual impact and land use compatibility of all proposed CMRS facilities.”** By administratively approving the tower, the city has removed the chance for the public to comment on the incompatibility of this tower to the local neighborhood, except by taking on the additional burden and cost of an appeal. The neighborhood residents have collected more than 280 signatures on a petition to the city to deny this tower. The process of administratively approving the tower has prevented the public its chance to dispute the construction project.

With the regulatory and code baseline established above, we must **explore two assertions in the approval letter that are interpretations and not indisputable fact.** These assumptions drastically affect how one can interpret the code and federal regulations therefore they deserve great scrutiny.

The approval letter quotes Colorado Springs City Code Section 7.5.1203.H stating that “A preexisting, legal nonconforming use which would require the approval of a conditional use in its zone district shall be presumed to have the required conditional use approval.” But if one reads the full context of the code’s Legal Non-Conforming Use Section 7.5.1201: PURPOSE starts the section with “*The purpose of this part is to establish criteria for the reasonable continuation of **legally established** uses which do not meet current use requirements and the reasonable use of nonconforming structures and lots. It is also **intended to prevent the expansion of nonconforming uses and structures.***” This portion of the code indicates the use in question must have been “legally established” and that any further use be “reasonable.” It also clearly states this section seeks to limit “expansion of non-conforming uses and structures.” **There is no proof to show this tower was “legally established.”** In a phone call with the city planner, Rachel Teixeira reported that during the city planner meeting with the developer on 9 July 2019, the city told the developer to produce proof of legal establishment. I waited to hear back from the city planner about a resolution to this request but the next contact was when I was told by the city planner was that the project had been administratively approved. **The fact of “legal establishment” seems to have been assumed by the City Planning office,** as there has been no documentation that cell antennas were ever approved for use on this tower by the city.

The approval letter also states at the end of the fourth paragraph “There are no substantial changes from the existing cellular tower to the proposed cellular tower as approved.” This statement is incorrect. **This proposal is a massive change to the tower structurally, visually and with respect to an increase in use.**

To further analyze the situation one should start with the first assertion that this tower is indeed a legal non-conforming use (which is a fact that is in dispute). We must analyze the extension of use, including structural changes, in Section 7.5.1203 Nonconforming Development.

7.5.1203: NONCONFORMING USES:

A. Continuation: The use of a nonconforming building and/or structure, landscaping and parking may continue, except as otherwise provided in this section.

B. Extension Of Use:

1. Use Of Land: ***A legal nonconforming use of land shall not be expanded, enlarged or extended in any way either on the same or adjoining properties.***
2. Use In Structure: The extension of a legal nonconforming use into any other portion of the structure in which it is housed shall be allowed only if the following conditions are met:
 - a. Such portion of the structure was primarily arranged or designed for such nonconforming use at the time this Zoning Code became effective, and
 - b. ***The extension of the nonconforming use in floor area does not exceed fifty percent (50%) of the floor area which was used by the nonconforming use at the time this Zoning Code became effective.***

When one reads section B it is evident that this proposal increases both use of land and increase in structure. The fenced in section at the base of the tower is increasing substantially (from 1244.7 sq ft to 1669.4 sq ft). **This land is on the same property but that is still expressly forbidden in Section 7.5.1203 B. 1.** The fenced area was enlarged to accommodate for a larger concrete base to support a larger diameter tower and to add an equipment shed.

Looking at the portion of the quoted code above that deals with structure, one can see this proposed plan is clearly in violation of extension limitation. The concrete pier (octagon in proposal) is expanding by more than 460% from the current concrete structure (from 33.1 sq ft to 154.1 sq ft) which is **9 times greater than the expansion limit set in the code.** In addition to the pier, they propose adding a 400 sq ft concrete pad, which **increases the current structure by 1200%.** The monopole tower itself will increase in cross sectional area likely well more than 50%. The neighborhood residents have asked both Vertical Bridge and the City Planning Office for the dimension of the current tower cross section and the proposed new cross section and we have not been given the dimensions (taking note that the cross section will taper and therefore needs to be calculated at multiple locations). Based on the drawings, the current radius at the base can be estimated at 1 ft. That would yield an estimated cross sectional area of 3.14 sq ft. That would mean the tower could only increase in radius by 3" if it were to remain within the 50% floor area (cross sectional) requirement. Based on visual renderings the pole itself will exceed this limit. For additional consideration with respect to cross sectional area, the portions of the tower with large cantilevered antenna will be a dramatic increase as well that is not accounted for in drawings and is only accounted for in one of the proposed four positions of the visual rendering.

To further the point that this structural change is noncompliant with Colorado Springs City Code reference Section 7.5.1203 **"E. Additions And Enlargement To A Structure: A structure housing a legal nonconforming use may not be**

added to, enlarged, or structurally altered for the nonconforming use.” The monopole tower itself will be enlarged in cross sectional area and by definition altered. This proposal is clearly an enlargement/alternation to the structure housing the non-conforming use. Every portion of the existing site is being expanded (with the exception of one shelter- instead of expanding the plan is to build a second shelter). This project is not permitted within the express language of the code.

Colorado Springs City Code also refers to project costs with respect to maintenance or repairs to a legal non-conforming structure.

*Section 7.5.1203 D. Repairs And Maintenance: A structure occupied by a legal nonconforming use may be repaired and maintained and if it is declared to be unsafe by a Regional Building Official, it may be strengthened or restored to a safe condition. However, the **cost of repairs and maintenance shall not exceed fifty percent (50%) of the replacement cost of the entire structure.***

*Section 7.5.1203 “G. Damage Or Destruction To A Structure: When a legal nonconforming use located on any land or a structure occupied by a legal nonconforming use is damaged by fire or other causes to the extent that **the cost of restoration exceeds fifty percent (50%) of the replacement cost of the use of land or replacement cost of the entire structure, then the nonconforming use shall no longer be permitted.***

It is reasonable to consider this modification will cost more than 50% of the replacement value of the current tower. The proposal includes the addition of a concrete pier and large concrete pad will exceed the cost of the current small concrete pad. The replacement of the tower itself with new specifically manufactured metal sleeve for the tower will certainly exceed 50% of the replacement value of the current pole itself. The modern antennas will cost significantly more than the current minimal implements on the standing tower. Additional ground equipment and more fencing will also add to the cost of the project. The developer has not shared the project cost with the neighborhood so we cannot provide specific numbers but we feel it is evident this project is not harmonious with the spirit of this section of the code.

There are several sections in Federal Regulation and City Code which encourages the use of existing towers to house additional antennas. We will look at each of those items to show **none of the documents in question advocate a major structural project/enlargement** to accomplish this goal. Additionally, **they do not require increasing non-conforming use.** The purpose of these regulations and sections of code are to minimize impact to residents but it is easy to see this project does not fall within the express language or intent of the following regulations.

The approval letter for the city quotes the Middle Class Tax Relief and Job Creations Act of 2012. The applicable part of this piece of legislation is included below.

SEC. 6409. WIRELESS FACILITIES DEPLOYMENT.

(a) FACILITY MODIFICATIONS.—

(1) IN GENERAL.—Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104–104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) ELIGIBLE FACILITIES REQUEST.—For purposes of this subsection, the term “eligible facilities request” means any request for modification of an existing wireless tower or base station that involves—

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment.

This federal law explicitly states that modifications that must be approved by cities should “*not substantially change the physical dimensions of such tower or base station.*” **The city planning office is incorrect in asserting the proposed changes are not substantial.** It is evident the changes are substantial based on several objective criteria. The changes are expressly against Colorado Springs City Code with respect to expansion of non-conforming use land area expansion and structural expansion. The cost of this project will exceed 50% of the current value of the tower indicating a substantial change. Additionally, this portion this Federal Law defines “eligible facilities request” as modifications to the transmission equipment. The existing tower in the existing position was never meant for this technology and a significant modification is required to house the proposed equipment. **This law supports the position of the neighbors and indicates the city is not required to approve this substantial change in structure.**

The most support the Colorado Springs City Code gives to this project comes from Section 7.4.602 in which city code encourages the use of existing towers.

B. CMRS Facilities And Wireless Broadband Antennas And Facilities Constructed On Existing Utility Infrastructure Or Within The Public Right Of Way Or Easements:

1. CMRS facilities and wireless broadband antennas and facilities attached to existing utility infrastructure (i.e., streetlight standards, water tanks, existing towers, and utility poles) located within Municipal or utility owned property, the public right of way or within utility easements are exempt from these regulations so long as the

following requirements are met. (Stipulated as all are met- see city code for complete list).

This clearly shows a preference in city code for existing towers, however as the existing tower cannot support the proposed equipment, we contend that the changes in structure must also meet code for non-conforming use. **Because the existing tower cannot function in this capacity, this section of city code does not apply to this project.**

The first table in Section 7.4.603 contains a comment related to nonstealth freestanding monopole towers *“Within residential zones, applications for freestanding facilities (stealth or nonstealth) shall only be considered for multi-family, institutional, or nonresidential sites such as churches, schools, museums, etc. **Freestanding facilities are not permitted in conjunction with a single- or two-family building.**”* This clearly outlines the incompatibility with the current location. The third table in the same section also has this note **“CMRS conditional use (CM1) applications shall be subject to Planning Commission review as a conditional use in accordance with article 5, part 7 of this chapter and the findings of this article and shall notify all property owners and neighborhood organizations located within a 1,000 foot radius from the proposed CMRS facility.”** Originally the city followed this protocol but then abandoned the process by administratively approving the tower.

Throughout this process Vertical Bridge and Kimley Horn repeatedly refer to this as a modification to an existing tower while their site plans indicate in the bottom left of the title page that the purpose of this project is “removal and replacement” of the existing tower. They are clearly trying to develop this project within a loophole in code and law to build a new tower under the guise that it is a simple modification. **Colorado Springs City Code clearly prevents this project for both a new tower and a legal non-conforming use modification.**

Assuming the city finds this structural change not applicable as a legal non-conforming use, the developers would need to apply as a new tower. Examining Colorado Springs City Code to show non-compliance of this project as a new tower indicates a great deal as to the overall intent of city code.

As stated above, in the first table in Section 7.4.603 note 2 a freestanding non stealth tower is not permitted in a residential area with single family homes. Even when granted conditional use in residential zones the following setback standard would prevent this tower from being built in this location.

B. Setback Standards:

1. ***Freestanding CMRS facilities shall be located no closer than a distance equal to five (5) times their height from property which is zoned R estate, R-1 9000, R-1 6000, R-2 or which is zoned R-4, R-5, PUD, or TND and used for single-family purposes, or which is not***

zoned residential but is within an area which is predominantly used for single-family purposes, unless a conditional use has been approved in accord with article 5, part 7 of this chapter authorizing a lesser setback. This setback shall not apply to multi-family projects, which are located in a zone, which also allows single-family uses. Said distance shall be measured in a straight line from the property line of the residential property to the proposed tower location. Stealth facilities are exempted from this setback requirement.

This 99'3" tower would require a setback of 496" from any residential property. As proposed, it will be located **only 76' from the closest residential property line and closer than 496" from more than 20 residential property parcels.** At this location, a developer would only be permitted to build a 15' tower. This use is clearly not harmonious with local surroundings and is not within the intent of Colorado Springs City Code.

To get a full understanding to the situation one must also look at the benefits to the community versus the adverse impacts and burdens to the neighboring residential properties. The primary benefit to the public would be a slight increase in cell service. As of now, the developer has shown no proof that there is missing service in the location that would benefit from this tower. One can postulate that a slight increase in data speeds would result for some users. **No one is being denied cell service without this tower.**

The adverse impacts to local residents are far more persuasive. **The visual impact to the area is severe.** The increase in the size of the pole itself will devalue the homes surrounding the field. Although there is currently a tower, it is thin and has minimal implements. It does not have the imposing visual weight of a modern thick industrial tower. The antennas will be large and plentiful. The visual renderings support this position. If constructed this tower will create a harsh negative aesthetic that does not exist with the current standing tower.

Although the Telecommunications Act of 1996 does not allow the city to deny a cell tower for health and safety reasons, possible future home-owners who are concerned about the safety of living near a cell tower will find for themselves plentiful peer reviewed science and medical journal articles about health related dangers in living very close to cell towers. **This will deter many potential buys, decreasing demand and ultimately property values of the nearby homes.** Those nearby homes will be used as comparables for all homes in the neighborhood and property values in this unique and historic portion of Colorado Springs will decrease. **This is a disproportionate and unfair burden for the affected homeowners.** The Association of Realtors has done studies and has data to back up the assertion that home values decrease when they are near cell towers.

We as neighbors hope the city hears our concerns and determines our position is completely right with respect the express language in Federal regulations and local zoning code. We feel this project is unreasonable and puts an unfair burden on local residents who should be protected by local zoning code. We have confidence that the city will see the right answer and know they are protected by Federal Regulation to uphold their city code and they will deny the tower.

To further demonstrate that this neighborhood does not want this tower, we have collected over 280 signatures on this petition and the number is still climbing. Included below is the wording of the petition.

We, the undersigned, call on the City of Colorado Springs to deny the construction application for Vertical Bridge to rebuild the dormant cell phone tower on the El Paso county land parcel 36-13-66. This tower will hold up to four high power RF cell transmitters that will disrupt quality of life for local residents and wildlife. This tower will cause financial hardship to local residents in the form of reduced property value and relocation costs for those who are concerned about the health implications. Protect the citizens of Colorado Springs and prohibit the construction of this cell tower.

Thank you for your time and we look forward to your decision.



Sally Maddocks
4807 Avondale Circle
404-909-1684

*****TELECOMMUNICATIONS ACT OF 1996- Full text of applicable section*****

SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY- Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

(7) PRESERVATION OF LOCAL ZONING AUTHORITY-

(A) GENERAL AUTHORITY- Except as provided in this paragraph, **nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.**

(B) LIMITATIONS-

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof--

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.
