



**COUNTY OF NEVADA  
COMMUNITY DEVELOPMENT AGENCY  
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Sean Powers  
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**NEVADA COUNTY BOARD OF SUPERVISORS**  
**Board Agenda Memo #2, Supplemental Information**

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**MEETING DATE:** March 13, 2018

**TO:** Board of Supervisors

**FROM:** **Brian Foss, Planning Director**

**SUBJECT:** Supplemental Board Agenda Memo Relating to;  
A Resolution denying the appeal filed by Johanna Finney, Cynthia Pierce, Alex Giron, Lisa Reinhardt, Shawn Blue, Ryan McVay, Krsna Bryant, Govida Bryant, Matt King, Dorothy Sullivan and Don Rivenes regarding the Zoning Administrator's November 29, 2017 adoption of the Mitigated Negative Declaration (EIS17-0022) and approval of the Conditional Use Permit (CUP17-0015) for AT&T Mobility dba AT&T Wireless (PLN17-0073) located at 19406 Burning Bush Road, Nevada City (APN 34-090-03), and sustaining the Zoning Administrator's approval of the Conditional Use Permit for AT&T Mobility dba AT&T Wireless.

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**RECOMMENDATION:** Adopt the attached Resolution (Attachment 1) to deny the appeal, and uphold the decision of the Zoning Administrator to approve Conditional Use Permit (CUP17-0015) for the AT&T Cell Tower Telecommunication Facility project.

**FUNDING:** This hearing will have no impact on the General Fund. This project will impact the Planning Department's FY 17/18 budget for staff time.

### **BACKGROUND TIMELINE**

June 30, 2017	Application for a Conditional Use Permit (CUP17-0015) for construction of an unmanned telecommunication facility
July 24, 2017	Incomplete letter sent to applicant requesting additional information and compliance with 30' property line setbacks.
October 19, 2017	Applicant submitted requested information
November 29, 2017	Zoning Administrator Hearing, Project Approved
December 11, 2017	Appeal filed with Nevada County Clerk
January 9, 2018	Board of Supervisor Hearing to Accept Appeal and set Hearing Date. Hearing date set for February 13, 2018
February 2, 2018	Letter received from Steve Michelsen, KYRR Broadcast Engineer containing new information and concerns
February 13, 2018	Appeal Hearing before the Board of Supervisors continued to March 13, 2018
March 13, 2018	Appeal Hearing before the Board of Supervisors

### **SUPPLEMENTAL INFORMATION**

Please note, the Board Agenda Memo #1 contains the appellants arguments for appeal and staff's responses to those original arguments. The appellant's arguments, nor staff's responses will be repeated in this memo.

New information pertaining to the AT&T Buning Bush Project (PLN17-0073) was received by County Planning staff on February 2, 2018 in a letter and in person from Steve Michelsen, KYRR Broadcast Engineer. Mr. Michelsen's concerns outlined in his letter (Attachment 1b) are in italics below followed by staff or AT&T's responses (AT&T response letter, Attachment 1b), as noted.

1. *Inconsistencies between site elevation identified in staff report and actual site elevation.*

**Staff Response:** The AT&T submitted site plan listed the site elevation as 3,6335.5 feet'. The staff report stated that the site elevation is 3,363.5 feet. Staff made the mistake of transposing the '6' and '3'. Nevada County's map portal lists the elevation of the parcel as 3,654 feet and Mr. Michelsen stated in his letter that the site elevation is at 3,675 feet.

AT& T's Radio Frequency Report used the 3,633.5 site elevation in their modeling. The site plan was prepared by a licensed professional land surveyor, therefore, the site elevation is based on a stamped survey.

2. *In the application, AT&T represents there are no closer sites for co-location and the nearest site is located in Nevada City on City Hall and the Chamber of Commerce. Both sites are five miles away.*

**AT&T Response:** The Radio Station KYRR site is situated in proximity to the proposed facility, however, the existing radio station tower is a 25 foot tall wooden pole. This pole is neither sturdy nor tall enough to provide any co-location opportunity for AT&T's proposal and equipment.

- 3. Of special concern is the A-array that will saturate the local neighborhood with high levels of RF in the 1.9 to 2.3 Gigahertz range. The A-array is focused on the Washington Ridge CYA Camp and residents of Royal Plam, Burning Bush, Barn Hollow, Cooper and Lightning Tree Roads affecting about 30 residences. AT&T has not offered a mitigation plan for interference to existing Part 15 devices in use in the neighborhood. An example of such interference that would require mitigation is the community Radio Station KYRR 93.3 FM that is located 1,500 feet east of the proposed tower site. The A-array will impact the Emergency Services Frequencies (EAS) FEMA system which will impair or interfere with the adopted emergency response plan.*

**AT&T Response:** AT&T only operates and broadcasts on its own federal licensed and authorized frequencies, therefore, no impact will be made on the existing KYRR broadcast tower or any local EAS systems. AT&T is not required to provide mitigation of existing local equipment such as phone lines, computers and other broadcast frequencies; however, because AT&T only operates at its own federal license and authorized frequencies, no such interference will occur.

- 4. A Complete Radio Frequency Compliance Report was not submitted.*

**Staff Response:** AT&T submitted a Radio Frequency-Electromagnetic Energy Compliance Report (EME) with their application in June, 2017, and submitted an updated report in January, 2018. Both reports can be found in the public hearing attachments (attached to the original staff report (Nov. 29, 2017) and attached to the Board Memo for the Appeal Hearing (February 13, 2018).

**AT&T Response:** AT&T has provided an EME report prepared by a licensed professional engineer which meets all federal communication industry standards. The radio frequency will be well below federal limits. The report does state the maximum power density generated by the AT&T antennas is approximately 2.70 percent of FCC's general public limit. The predicted composite exposure level from all carriers on this site is approximately 8.20 percent of FCC's general public limit at the nearest walking/working surface to each antenna. Should additional carriers co-locate on the tower, they will be required to obtain their own permits and prepare EME reports that analyze their radio frequency emissions to ensure they are below federal limits.

Staff will provide a brief presentation that will describe the issues and concerns that have been identified by members of the public both at the public hearing and in writing. The presentation will also discuss how the issues/concerns were reviewed by staff and the conclusions staff made in their evaluation.

AT&T will also provide a brief presentation on the recent concerns identified by the neighboring Radio Station KYRR.

**APPEAL CONCLUSION:** The Board of Supervisors does not have to adhere to the determination of the Nevada County Zoning Administrator; however, staff finds there is no compelling reason not to accept the project approval. Staff finds that the project is consistent with the County Land Use and Development Code, General Plan and CEQA requirements for the reasons discussed in the Board Memo dated February 13, 2018.

Many concerns were raised during the public hearing before the Zoning Administrator, and the Zoning Administrator exercised his independent judgment, to determine that the project impacts were all mitigated to a less than significant level. The summary of proceedings document the public hearing the the Zoning Administrator's justification for project approval (Attachment 7).

**SUMMARY:** The findings and record in support of the Zoning Administrator's final decision are found in the attached November 29, 2017 Zoning Administrator staff report, the November 29, 2017 Memorandum, and the November 29, 2017 summary of proceedings (Attachments 5, 6, and 7). Before taking action on this appeal, the Board should independently consider the Zoning Administrator's staff report, memorandum and meeting minutes with the discussion and reasoning presented in this report. Collectively, this information provides the reasons in support of those new findings listed in the Resolution to deny the appeal, and uphold approval of the Use Permit.

**Please contact me should you require additional information or background.**

**Item Initiated by:** Coleen Shade, Senior Planner

**Approved by:** Brian Foss, Planning Director